

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

15-CR-00637 (KAM)

4 Plaintiff,

United States Courthouse  
Brooklyn, New York

5 -against-

July 12, 2017  
9:00 a.m.

6 MARTIN SHKRELI,

7 Defendant.

8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
10 BEFORE THE HONORABLE KIYO A. MATSUMOTO  
11 UNITED STATES DISTRICT JUDGE  
BEFORE A JURY

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript  
25 produced by computer-aided transcription.

1 COURTROOM DEPUTY: All Rise.

2 THE COURT: Counsel, good morning. Do you have any  
3 issues you'd like to bring o up to the Court?

4 MR. BRAFMAN: No.

5

6 THE COURT: All right. Thank you.

7 (Jury enters the courtroom.)

8 THE COURT: Good morning, members of the jury. All  
9 are present. Have a seat everybody.

10 The Government would like to continue the  
11 examination.

12 MS. KASULIS: Yes, your Honor.

13 (Witness enters.)

14 THE COURT: Good morning.

15 THE WITNESS: Good morning.

16 (Witness takes the witness stand.)

17 STEVEN RICHARDSON, called as a witness, having been previously  
18 first duly sworn/affirmed, was examined and testified further  
19 as follows:

20 THE COURT: Nice to see you you're still under oath,  
21 sir, the Government will continue its examination.

22 THE WITNESS: Thank you.

23 MS. KASULIS: May I proceed, your Honor?

24 THE COURT: Yes, you may.

25 (Continued)

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 DIRECT EXAMINATION

2 BY MS. KASULIS:

3 Q Good morning, Mr. Richardson.

4 A Good morning.

5 Q So yesterday we spoke about Retrophin and the 2012 time  
6 period, now we'll talk about Retrophin in the 2013 time  
7 period. During that time period, 2012 to 2013, who was  
8 controlling Retrophin?

9 A Martin Shkreli was certainly leading the company.

10 Q Who had access to Retrophin's bank accounts during that  
11 time period?

12 A Martin.

13 Q Following the reverse merger that we spoke about  
14 yesterday, did you have any discussions with the defendant  
15 regarding the status of your investment in Retrophin?

16 A Yes, I did.

17 Q So I'm showing you what is marked for identification as  
18 Government's Exhibit 122-38, tab 49 of your binder. It's --  
19 122-39, I'm sorry.

20 A Bear with me. It's tab? I'm sorry.

21 Q Tab 49 of your binder.

22 A Thank you.

23 Q Do you recognize this document?

24 A Yes.

25 Q What is it?

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 A It is an e-mail from Martin telling us that our stock  
2 certificates are available.

3 Q What is the date on this e-mail?

4 A Dated January 24, 2013.

5 MS. KASULIS: The Government moves this exhibit into  
6 evidence.

7 MR. AGNIFILO: No objection.

8 THE COURT: We'll receive 122-39.

9 (Government Exhibit 122-39, was received in  
10 evidence.)

11 Q This appears to be an e-mail from Mr. Shkreli to a number  
12 of receipts including yourself, Mr. Richardson?

13 A Yes.

14 Q The date is January 24, 2013?

15 A Yes.

16 Q It's regarding Retrophin stock certificates?

17 A Yes.

18 Q The first sentence reads, "You may now call our transfer  
19 agent Standard Registrar and Transfer Company" -- with the  
20 phone number -- "and request the FedEx of your stock  
21 certificates. Once you receive your certificates you may  
22 deposit them at a brokerage of your choice at your  
23 convenience. The shares will be restricted from trading until  
24 a registration statement is filed."

25 What does that mean to you, that the shares will be

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 restricted from trading?

2 A That there was a period of time that we, as investors,  
3 have to hold them, not able to trade them.

4 Q If you look at the next paragraph, he states, "Of course  
5 I trust there will not be any sellers whatsoever." Then goes  
6 on to say, "In all seriousness, thank you for your support."

7 Did you feel any pressure from the defendant to not  
8 sell your Retrophin stock?

9 MR. AGNIFILO: Objection to the form of the  
10 question.

11 THE COURT: Try to rephrase it Ms. Kasulis.

12 BY MS. KASULIS:

13 Q During this time period did you have any discussions with  
14 the defendant regarding selling your Retrophin stock?

15 A No, I did not.

16 Q Now I'm showing you what's been marked for identification  
17 as Government's Exhibit 122-97, it's tab 50 of your binder.

18 A Yes.

19 Q Do you recognize this document?

20 A Yes.

21 Q What is it?

22 A An e-mail exchange between myself and Martin.

23 Q What is the date on the exchange?

24 A Starts on the 7th of March, 2013.

25 MS. KASULIS: The Government moves this exhibit into

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 evidence.

2 MR. AGNIFILO: It's one of new exhibits, I just have  
3 to -- no objection.

4 THE COURT: We will receive Government's Exhibit  
5 122-97.

6 (Government Exhibit 122-97, was received in  
7 evidence.)

8 BY MS. KASULIS:

9 Q Mr. Richardson, if we could start with the first email  
10 chronologically in the chain, March 7, 2013, from you to  
11 Mr. Shkreli with a title, "clarify headline numbers." Can you  
12 read this, what you wrote in this e-mail to the jury?

13 A "Hi again M. I know you are sending me the  
14 reconciliation of my monies with you from MSMB Capital through  
15 to the present day. But I need to submit my Form 4 for the  
16 recent stock purchases is adding more urgency. Evan's team  
17 sent me back the Form 4 saying I hold 99,055 shares after the  
18 1,000 I had purchased. Is that the common stock? I am  
19 holding preferred stock as well, but I don't have to record on  
20 the Form 4. I'm trying to see where my total value sits,  
21 knowing how well it grew from the MSMB fund and through the  
22 private Retrophin holding, where I know you kindly gave me an  
23 extra stock along the way. I clearly have a lot more of the  
24 99,000. I don't want to sign the Form 4 until I know the  
25 accurate picture. Please give me the overall picture so I

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 know how to submit the Form 4 correctly."

2 Q What is a Form 4?

3 A A Securities Exchange requirement to log how many, what  
4 my shareholding is.

5 Q Had you just made another purchase of Retrophin stock, is  
6 that what you're discussing, in part, in this e-mail?

7 A Yes. I additionally just purchased 1,000 shares myself.

8 Q If we go to the Mr. Shkreli's response.

9 A He says, "Yes, it is a lot more, let me do some work."

10 Q Do you respond to this e-mail?

11 A Yes. I say, "Good. I know I have north of 5 percent  
12 when it was 8 million shares. I know that was diluted when  
13 the financing took us to 12 million. Look forward to  
14 confirmation."

15 Q When you say, "I know I had north of 5 percent," what are  
16 you referring to there?

17 A Both verbal commitments that Martin had given me and the  
18 Capitalization Table, which said I would be getting 5 percent  
19 of the company stock.

20 Q When you refer to, "when the financing took us to  
21 12 million," what are you referring to there?

22 A We initially were operating with 8 million shares. And  
23 as you go out and sell more shares we went from 8 million to  
24 12 million. So whatever percent I had will be slightly  
25 diluted, slightly smaller, a piece of 12 million instead of a

STEVEN RICHARDSON - DIRECT - MS. KASULIS

1 piece of 8 million.

2 Q During this time period, did you continue to have  
3 discussions with the defendant about your holdings in  
4 Retrophin?

5 A Yes.

6 Q I'm showing you what's been marked for identification as  
7 Government's Exhibit 122-41, it's tab 51 of your binder.

8 A Yes.

9 Q Do you recognize this document?

10 A Yes.

11 Q What is it?

12 A An e-mail exchange between myself and Martin.

13 Q The date on the e-mail exchange?

14 A It starts on March 13, 2013.

15 MS. KASULIS: The Government moves this exhibit into  
16 evidence.

17 MR. AGNIFILO: Can we approach for a second?

18 THE COURT: Yes.

19 (Continued on the next page.)

20 (Sidebar conference.)

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## SIDEBAR CONFERENCE

1 THE COURT: Can you work it out?

2 MR. AGNIFILO: We might be able to. So the  
3 objection is, this is one of -- the format is different, one  
4 of the Jackson Su emails that's been our position he stole.  
5 But, so what we're going to do is this, I don't want to  
6 interrupt the direct. It's harmless. But I don't want to  
7 waive the objection by letting this in. What we'll do is put  
8 it in then substitute, you probably have another one.

9 MS. SMITH: Just so it's clear, when Mr. Su was  
10 copying and printing out these e-mails, obviously the MSMB  
11 Capital e-mail address is one that, as we discussed early on,  
12 was on the Retrophin servers. However, Mr. Shkreli, after he  
13 was terminated went back into the servers and deleted  
14 documents. And not all of the documents with that e-mail  
15 address remain on the server. I don't know whether or not we  
16 are going to be able to get this off of the Retrophin server.

17 It's our position that this is an authentic  
18 document. And Mr. Richardson can testify that he actually  
19 received this document. It has his e-mail address on it. We  
20 understood the objection with Mr. Su, in part, because Mr. Su  
21 himself didn't send or receive this e-mail. He was watching  
22 them pop up and printed them out. But whether or not we are  
23 going to get this off of Retrophin servers is another question  
24 because of the actions that the defendant himself took.

25 THE COURT: What about Mr. Richardson, does he have

## SIDEBAR CONFERENCE

1 this e-mail change?

2 MS. KASULIS: I have to go back and look.

3 MR. AGNIFILO: Here is what I'm happy to do. The  
4 only reason I'm objecting, I've made a legal objection and I  
5 don't want to waive it by letting it in but I also don't want  
6 to interrupt the flow of the direct.

7 What I'm happy to do is, if you have another version  
8 of this, and you can swap it out later, you'll do that. If  
9 you don't have another version of it, without waiving my  
10 objection overall to the proprietary of the Su e-mails, I  
11 don't want to interrupt the trial obviously. We'll just let  
12 it come in with that understanding.

13 THE COURT: Well, all right. I don't know how you  
14 would propose to authentic this Su e-mail. The Government  
15 does have a difficult position if this fact what they say is  
16 correct, that Mr. Shkreli deleted e-mails from the servers  
17 where you would have otherwise not have an objection.

18 MR. AGNIFILO: I don't know that that's true. I'll  
19 work with them. I'm not going to object. I'm putting my  
20 objection here.

21 MS. SMITH: It may be that we can find another  
22 version.

23 MR. AGNIFILO: If you can, great; if you can't,  
24 without waiving the overall objection.

25 MS. KASULIS: This is the version that was clearest

SIDEBAR CONFERENCE

1 that we got.

2 MR. KAPLAN: Presumably you would have his AOL  
3 account also.

4 MS. KASULIS: Right. We have to check. It could  
5 have been this was a clearest version, for example, that  
6 didn't have writing on it.

7 MR. AGNIFILO: If you swap it out, great; if not,  
8 don't.

9 THE COURT: So it will be admitted.

10 MR. AGNIFILO: Yes.

11 (End of sidebar conference.)

12 (Continued on the next page.)

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1 (In open court.)

2 MR. AGNIFILO: With the understanding that we  
3 discussed at sidebar, I waive the objection to this one  
4 document.

5 THE COURT: All right. We will admit Government's  
6 Exhibit 122-41.

7

8 BY MS. KASULIS:

9 Q Mr. Richardson if we could start with the earliest e-mail  
10 in this chain. This e-mail chain is between yourself and  
11 Mr. Shkreli; is that right?

12 A Yes.

13 Q So it appears that this you sent an e-mail on March 13,  
14 2013, to Mr. Shkreli and it's regarding candidate, you say,  
15 "Hi M. Hope the trip and presentation go well. I'm now back  
16 in NYC and had a good call with Marc Panoff. Let me know when  
17 you're back in NYC so I can debrief you on my thoughts. Save  
18 travels S."

19 Who is Marc Panoff?

20 A One of the candidates I was interviewing for our Chief  
21 Financial Officer position.

22 Q If we go to Mr. Shkreli's response starting on the prior  
23 page, the first page of the document.

24 A Yes.

25 Q Dated March 13, 2013, he states, "Just a reminder, we

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1 have never given options or stock to anyone, something we are  
2 sorely overdue for." On the bottom he lists out you're first  
3 MSMB Capital Management investment?

4 A Yes.

5 Q If you go to the top of the next page, zoom in on this  
6 whole e-mail.

7 A Yes.

8 Q Mr. Shkreli appears to list out his accounting of your  
9 various investments in MSMB Capital, and then Retrophin LLC do  
10 you see that at the top portion here of the page?

11 A Yes.

12 Q Is he states, "Total cash invested 460,000," and then  
13 referring to the units of Retrophin owned, then in bold  
14 states, "122,916 total shares post conversion times \$4.90  
15 stock price equals \$602,288.40." Do you see that there?

16 A Yes.

17 Q So underneath that he writes, "So according to my math,  
18 you're missing about 25,000 shares." When he was referring to  
19 shares is he referring to Retrophin shares?

20 A Yes, he is.

21 Q He then write, "The company has never given stock out to  
22 you, which I think is something overdue, perhaps even owed to  
23 you, and that we should discuss ASAP." What is your reaction  
24 to seeing that the company had never given stock out to you?

25 A A little surprised, a little surprised. I'd been a Board

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1 member for a period of time. I was expecting some recognition  
2 as a Board member, but we hadn't discussed it as a specific  
3 number at that point.

4 Q And then you respond to this e-mail; is that correct,  
5 Mr. Richardson?

6 A Yes.

7 Q What is the subject line here of this e-mail?

8 A "Major concern".

9 Q Was that actually different than the subject line for the  
10 e-mail that Mr. Shkreli sent you that you're responding to?

11 A Yes, I had changed it.

12 Q Why did thank you change it to major concern?

13 A Because I felt the response here just given me, the one  
14 we reviewed, was significantly different than what he said to  
15 me even a few days earlier in talking about the 5 percent of  
16 the company and talking about the aspects of the  
17 Capitalization Table.

18 Q Can you please read your e-mail that you sent to  
19 Mr. Shkreli in response to his e-mail.

20 A "M, this is exactly why I had been asking for an accurate  
21 accounting for months. Your summary below is well off the  
22 mark, even at a factual level, and that's pushing the verbal  
23 and written commitments to the side for the moment. If your  
24 numbers below are to believe, then you're asking me to accept  
25 an actual loss on my investment since MSMB, and then have the

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1 news compounded with zero upside from getting Retrophin from  
2 day one, where I signed papers telling me we have potential  
3 stock pricing before we went public" -- excuse me,  
4 "preferential stock pricing before we went public. Also any  
5 calculation of my investments into Retrophin as a public stock  
6 would be need to be assessed at agreed initial strike price  
7 which I recall was \$2 or 2.50 not 4.90. As a founding  
8 investor how can there be no accurate record of my accumulated  
9 investments? I'm at a dinner with friends but will send a  
10 list of facts back to you in the morning, which will then need  
11 to be tracked back to the market pricing decisions taken been  
12 Retrophin each step of the way. This is a huge disappointment  
13 to me and a lesson to me letting friendship drive blind faith.  
14 And no, I haven't spoken with the transfer agent. I wanted an  
15 accurate reconciliation of my stockholding before I did,  
16 fearing you didn't have an accurate record."

17 Q When you write here, "This is a huge disappointment to me  
18 and a lesson to me letting friendship drive blind faith," what  
19 do you mean there?

20 A I had raised this issue back at the point of our  
21 Capitalization Table coming out when I first raised the  
22 subject of Martin saying I really want to have a clear picture  
23 of what my stockholdings are and the value of them. And so I  
24 was blindly waiting from, I think November through to March,  
25 expecting he'd give me an accurate response at this point.

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1 Q When you say not, "letting friendship drive blind faith,"  
2 what do you mean by that?

3 A Again, trusting that he would be coming back to me at  
4 this point with an accurate reflection of the stock I was  
5 holding per the Capitalization Table from late 2012.

6 Q Let's look at -- did Mr. Shkreli in fact respond to this  
7 e-mail?

8 A Yes.

9 Q Let's look at that response.

10 A Yes, do you want me to read it?

11 Q I can read the first couple of sentences. "Yes,  
12 Retrophin has not been a good investment in the last six  
13 months. There wasn't much we could do other than what we did.  
14 There is some good news, we should be able to transfer some  
15 stock from Marek and myself to make sure everyone ends up a  
16 winner." When you saw the "Retrophin has not been a good  
17 investment in the last six months," what was your response to  
18 that?

19 A I certainly knew given the strategic direction, that we  
20 had to move in a different direction, but I was surprised to  
21 see it written like that.

22 Q Did you in fact send in your own accounting of your  
23 holdings in Retrophin to the defendant?

24 A Yes, I did.

25 Q I'm showing you what's been marked for identification as



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1 Government's Exhibit 122-42, and it's tab 52 of your binder.

2 Do you recognize this exhibit, Mr. Richardson?

3 A Yes.

4 Q What is it?

5 A It is my own reconciliation starting to layout my  
6 assessment of the facts on my stockholding in an e-mail  
7 exchange with Martin.

8 MS. KASULIS: Government moves this exhibit into  
9 evidence.

10 MR. AGNIFILO: No objection.

11 THE COURT: We will receive Government's Exhibit  
12 122-42.

13 (Government Exhibit 122-42, was received in  
14 evidence.)

15 BY MS. KASULIS:

16 Q If we can start on the last page of this exhibit, ending  
17 505, the earliest e-mail in this chain, the bottom, this is if  
18 we scroll up, does this appear to be the prior e-mails that we  
19 saw in Government's Exhibit 122-41?

20 A Yes, it's the same e-mail exchange.

21 Q Okay. If we could go to the prior page, you submit a  
22 fairly lengthy e-mail to Mr. Shkreli. Why don't we focus on  
23 the first half of that e-mail.

24 A Yes.

25 Q Does it appear to be your response to Mr. Shkreli

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1 outlining what you believe your holdings are in Retrophin?

2 A Yes, I had gone back to my files and my emails to pull  
3 out of facts as I saw them.

4 Q So you write Martin, "Here are the facts that I have on  
5 file." Your first point is entitled "my investments into  
6 MSMB;" is that correct?

7 A Yes.

8 Q Then you then list your \$400,000 and the dates of those  
9 investments into MSMB Capital?

10 A Yes.

11 Q That last line, the last section here, what do you write  
12 "This 400,000"?

13 A "This 400,000, thanks to you and your team's performance,  
14 stood \$583,482 as of February 2012, the last MSMB performance  
15 summary I've access to. All of which was moved into  
16 Retrophin. So a total of 583,482 invested into Retrophin at  
17 the deeply discounted preferred stock rate."

18 Q Your second point, "My additional investments into  
19 Retrophin," and you then list out your additional investments  
20 and the dates of those investments; is that right?

21 A Yes.

22 Q Then you write, "So an additional 75,000 invested into  
23 Retrophin, again at the preferred stock rate;" is that  
24 correct?

25 A Yes.

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1 Q The third point is regarding what we had spoken about  
2 yesterday entitled "My investments in MSMB consumer and  
3 Surepoint."

4 A Yes.

5 Q What do you write?

6 A "Of the \$100,000 I invested, I was refunded \$86,967, a  
7 loss of \$13,033. You committed to cover these losses and  
8 rather than receiving a check I asked you to invest the 13,033  
9 into Retrophin on my behalf."

10 Q Then write below that it appears that you then tally  
11 points one, two, three; is that correct?

12 A That's correct.

13 Q What do you state there?

14 A "Running total, so I have invested 671,515 into Retrophin  
15 all at the preferred discounted rate, which while private was  
16 \$20 and \$25, while the valuation set at \$80 per e-mails from  
17 you and Jackson."

18 Q Then section four below that is entitled, "the multiplier  
19 factors and conversations." You then write, "You have said to  
20 me a number of times that you had added to my portfolio in  
21 recognition of my sustaining role and being a board member."

22 Then right below that you state, "You shared the  
23 Capitalization Table, which showed my shares moving from  
24 14,361, (2%) to 264,361 (5%). As Aselage, Tim and others  
25 received stock, I was left with the clear impression this new

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1 allocation was made effective."

2 Who is Tim?

3 A This is Tim Pierotti.

4 Q Below that you wrote, "In sharing news of the final  
5 financing deal you verbally reaffirmed to me that I had  
6 5 percent before the move to 12 million shares and that my  
7 stake was worth between 1.5 and 3 million;" is that correct  
8 there, sir?

9 A Yes.

10 Q If we go to the next page, just look at the rest of your  
11 response. The fifth point is entitled, "critical calculation  
12 points," then why don't we go to the last sentence in this  
13 section starting, "Which ever way," read that?

14 A "Which ever way I look at it, I was expecting my stake to  
15 be worth north of 1.5 million entering this phase of our  
16 evolution and before the market price took hold."

17 Q You have a section entitled, "key actions," can you read  
18 those key actions that you list there?

19 A "Somebody needs to do a forensic accounting review of any  
20 investments and the transactions pricing decisions taken at  
21 each decision action point. You need to clarify where/when  
22 the new capitalization takes or took effect, and whether I was  
23 included."

24 Q Why are you asking for a forensic accounting review of  
25 your investments?

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1 A Because I was disappointed by, as per the earlier e-mail  
2 we reviewed, disappointed by Martin's first response to this  
3 discussion around reconciling my investments.

4 Q Did Mr. Shkreli then respond to your e-mail?

5 A Yes.

6 Q Let's look further up in this chain. It appears his  
7 response starts at the bottom of the first page of this  
8 exhibit ending in 503, from Mr. Shkreli to you Mr. Richardson  
9 on March 14, 2013, do you see that?

10 A Yes.

11 Q If we go to the next page, can you please read that first  
12 paragraph there to the jury?

13 A "I agree that you should have about 400,000 shares, which  
14 would have been 5 percent of the company post DGTE" -- Desert  
15 Gateway -- "the company had \$88 million post DGTE."

16 Q Keep going.

17 A "So we owe you 300,000 shares. I think we can  
18 accommodate this painlessly. I think my accounting was  
19 accurate. I think there was some miscommunication on my part,  
20 but also some great fault on my part for not being clear. I  
21 probably assumed an options grant would be done when it  
22 wasn't. I will try to be more clear and direct in the  
23 future."

24 Q So in terms of this paragraph, did you at this point in  
25 time believe you were owed 300,000 shares of Retrophin?

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1 A Yes.

2 Q If we read the next paragraph.

3 A "I have a call with Evan to see what the best path  
4 forward is. The biggest two deltas here are the perception of  
5 a deeply discounted rate, that was not the case. We always  
6 had looked Retrophin valuations of 20 and \$40 million, both of  
7 which proved to be heavily optimistic as we raised the 10  
8 million at a 24 million valuation."

9 Q Just to stop you there, when he said, "we raised the  
10 10 million," what is that a reference to?

11 A One of our financing.

12 Q When you say financing, what do you mean?

13 A One of the investment pipes calling for more investments.

14 Q Just what is a pipe?

15 A A pipe is a private investment in public equity.

16 Q What does that mean when you say, this is one of the  
17 pipes?

18 A When we go out to the market looking to attract new funds  
19 and bringing investors in. When you do a pipe, normally it's  
20 at a discounted rate on the stock price so that it becomes an  
21 attractive way to attract new dollars for the company.

22 Q So looking back on this e-mail, when Mr. Shkreli writes,  
23 "we raised 910 million," is that a separate pipe that had  
24 recently occurred with respect to Retrophin?

25 A Yes.

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1 Q Then can you continue, please?

2 A "The second misunderstanding is the added stock for your  
3 recognition. This was repeatedly said but frankly never done  
4 for any of us on the Board. I have been pushing Evan for a  
5 grant but it simply hasn't happened given all we've tried to  
6 accomplish."

7 Q The Evan references who you are referring to, who Evan  
8 is?

9 A Evan Greebel, who again, is the outside counsel and  
10 acting internal counsel.

11 Q If you could proceed with the last paragraph.

12 A "The good news is, it is all fixable. I certainly feel  
13 that without any top up, the number you have now is still shy  
14 but not terribly shy of accurate. The top up is obviously the  
15 big part and a lot of people got topped up with the DGTE  
16 transaction, which should have been handled very differently.  
17 I'm apologetic for the way this was handled. We can go over  
18 that in person. In the meantime I will discuss the solution  
19 with Evan tonight. I hope we can secure your signature  
20 tomorrow, as penalties kick in if we don't all sign it."

21 Q "I hope we can secure your signature tomorrow, as  
22 penalties kick in if we don't all sign it," do you know what  
23 he's referring to there?

24 A He's referring to the S1 form that was the subject to my  
25 earlier e-mail that had to be submitted by a concern deadline,

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1 otherwise the company would be held liable for not meeting  
2 registry deadlines.

3 Q Your understanding is you had to sign that form as part  
4 of your role in the company?

5 A Yes.

6 Q Did you respond to this e-mail, Mr. Richardson?

7 A Yes.

8 Q Why don't we take a look at that. Can you please read  
9 your response to the jury?

10 A "I appreciate the spirit of your response and I hate  
11 finding myself in this situation. I never fueled this vision  
12 with you having money at the center. I always knew I would  
13 lose it all, or do amazingly well. But I always proceeded  
14 with your endorsing words believing that my core investment  
15 was accumulating well through these early stages and my  
16 jumping in early each time to invest would be recognized. You  
17 are right, we need to get this fixed and behind us and commit  
18 that we never get far apart in understanding again. Knowing  
19 we have to go over the details in my investment journey, I  
20 don't yet agree that the accounting you laid out is accurate.  
21 My summary to you highlighted a number of discrepancies that  
22 you are not -- that are not to do with any top up or options.  
23 I can't sign the filing with the current data in it. As I  
24 speak with Evan perhaps there is a way to footnote this as an  
25 open issue being worked on. We will need to move forward in



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1 good faith that the right resolution is locked. Let me know  
2 what your recommendation is after you discussed with Evan."

3 Q Why did you feel you couldn't be followed with signed the  
4 S1 form?

5 A Because to me there was some factual errors on the  
6 initial list that Martin shared with me about my  
7 stockholdings. He missed one or two of my of contributions.

8 Q If we look at the response from Mr. Shkreli.

9 A "Just so we're transparent, the issue with the S1 is it  
10 needs to be filed with the SEC by tomorrow, by tomorrow night,  
11 or there are punitive damages that they begin in favor of the  
12 investors who just invested. I personally swear to you that  
13 my assessment is that it is largely irrelevant what number is  
14 written there. You are right to be wanting to be accurate.  
15 So as long as you get to where you want through our  
16 discussions, which I have no reason to think that you  
17 shouldn't, have the faith we can arrive at it in the very near  
18 future."

19 Q You respond to Mr. Shkreli; is that correct,  
20 Mr. Richardson?

21 A Yes.

22 Q Let's look at your response. If we can scroll up, can  
23 you please read your response?

24 A "The way you forward your outline is fine. And yes, I  
25 have trust of that it being fulfilled, although it pains me

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1 that I would be sourcing shares from you and Marek. I agree  
2 that option grant should be issued to a select few. Are you  
3 therefore to sign the filing as is, or is Evan making any  
4 changes?"

5 Q So your understanding, when you say the "sourcing," that  
6 it would be sourcing shares from you and Marek, what do you  
7 mean by that?

8 A Again, in the earlier communication to me he said that  
9 part of making sure I got to the accurate number, i.e. the  
10 300,000 shares, that Marek and he would be contributing to  
11 those shares that were owed to me.

12 Q So those were Marek and Martin's shares in Retrophin that  
13 he would be giving you?

14 A Yes.

15 Q If we go to Mr. Shkreli's response, the last e-mail in  
16 this chain.

17 A Yes.

18 Q What does he write there?

19 A "He will make the changes that will indicate a large  
20 share count. I would not feel pained at all. We had intend  
21 to do this for sometime. We apologize for not having our act  
22 together. With everything in the air I hope you understand  
23 why we overlooked it. It is because we do in fact do trust  
24 and love you, not because we thought we could avoid this. I  
25 thank you for holding me accountable. I dread giving anyone a

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1 feeling that I'm abusing a friendship."

2 Q Did you have any further discussions with the defendant  
3 about him giving you some of his Retrophin shares?

4 A Yes. There was a follow up, I think a few days after  
5 this, where I met with him in the office and talked through  
6 the subject in person with him.

7 Q What do you recall discussing in that conversation?

8 A I was, again you can tell from these e-mail exchanges, I  
9 was pretty upset. I asked him to get me more background on  
10 why exactly this happened. He shared with me, he said that he  
11 did have a problem with the MSMB funds in the period from when  
12 it was, in the period from when it was winding down before the  
13 monies were moved into Retrophin for any of the investors that  
14 chose to do that.

15 Q What else did he discuss with you in that meeting?

16 A He said that he diluted to that in these e-mails, there  
17 were a number of investors that chose to move their funds  
18 over to Retrophin, that indeed he had to top up. I was not  
19 the only one that indeed he was going to have to top up.

20 Q Your understanding was that those investors were  
21 similarly situated to you, meaning they had chosen to role  
22 their investment in MSMB Capital, or any other fund, into  
23 Retrophin?

24 MR. AGNIFILO: I object to leading, Judge.

25 THE COURT: Overruled.

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1 A Yes, yes, that's certainly the way he expressed it to me.

2 Q What did he say with respect to giving you shares from  
3 his own Retrophin holdings?

4 A He had shared with me, because it was going to represent  
5 a sizeable number of shares, that he would be passing to me  
6 and to some other investors that as he was the regarded CEO it  
7 wouldn't look good if these shares all came down dramatically,  
8 quickly. It could be viewed by the investment market as a  
9 negative signal and would I mind waiting to get my shares as  
10 he worked through some of other ones he was going to do. So  
11 it didn't have a dramatic impact on reducing his personal  
12 shares, which the market could view negatively. I said I  
13 would be willing to wait.

14 Q Did you have a sense of how long you were being -- what  
15 was your understanding of how long you were being asked to  
16 wait?

17 A There was no precise timeline that we agreed. I got the  
18 impression it was a matter of months.

19 Q Did you ever see a finalized Capitalization Table for  
20 Retrophin?

21 A No.

22 Q Did you ultimately sign this S1 registration form that's  
23 the being discussed in the e-mail chain at 122-42?

24 A Yes, I did, on the basis that I clarified that when my  
25 stock was changed we would send a revision of that form in.

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1 So I did sign the S1 at that point.

2 Q Did the defendant ever give you shares from his Retrophin  
3 holdings, the ones that he had stated he would give you?

4 A No.

5 Q Did you ever file a revised S1 statement?

6 A No.

7 Q I wanted to next discuss with you Retrophin in the 2013  
8 into 2014 time period after the reverse merger. Immediately  
9 following Retrophin becoming a public company, at the end of  
10 December 2012, what was your position or role at Retrophin?

11 A I continued on the Board of Directors.

12 Q In that role, did you have an understanding of  
13 Retrophin's financial state at this point in time?

14 A Generally, yes. I know we were very, very tight on cash  
15 available to us at that point.

16 Q Did you have access to the bank accounts of Retrophin?

17 A No.

18 Q After Retrophin became public, what was your  
19 understanding as to what the plan was for Retrophin in the  
20 first half of 2013?

21 A Well, the decision we made at the end of 2012 not to go  
22 to the merger route or the venture capital route, meant now we  
23 were determined, having done the reverse merger with Desert  
24 Gateway, established us on the over-the-counter markets. That  
25 now we would be a stand-alone company. Now we needed to

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1 seriously build out our capability and really look at bringing  
2 drugs on board, building up a management team and bringing in  
3 expertise we needed. And as the year progressed, building up  
4 the Board of Directors as well. Now we were no longer  
5 thinking of merging with someone else, we had to build those  
6 capabilities ourselves.

7 Q When you were talking about building out the management,  
8 were you part of the process of helping to build out the  
9 management at Retrophin?

10 A Yes, because again, with my HR background Martin asked me  
11 to interview some of key senior positions as candidates that  
12 were identified.

13 Q Did you in fact participate in those interviews?

14 A I did, for the Chief Medical Officer position and for the  
15 Chief Financial Officer position.

16 Q Were those two positions filled?

17 A They were, around mid-year.

18 Q Mid-year, which year?

19 A 2013.

20 Q With respect to the Chief Financial Officer position, who  
21 obtained that position?

22 A The final candidate that was selected was Mark Panoff.

23 Q With respect to the Chief Medical Officer position, who  
24 filled that role?

25 A A gentleman called Horacio Plotkin.

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1 Q What, if any role, did Steve Aselage play in the first  
2 half of 2013?

3 A At this point, given the fact that we had changed  
4 strategy, he had vacated the CEO role that he had assumed in  
5 late 2012 for the company, and Martin had retaken, resumed the  
6 CEO rolled, and Aselage continued on the Board of Directors.

7 Q You had said that in the first half of 2013 Mr. Shkreli  
8 was the CEO of Retrophin?

9 A Yes.

10 Q What about Evan Greebel? What was his role, if any, with  
11 respect to Retrophin in the first half of 2013?

12 A Continuing as both external legal counsel and acting as  
13 internal counsel.

14 Q Do you know who Ron Tilles is?

15 A Ron is someone that Martin had accessed who was very good  
16 at building future investors and attracting that, and looking  
17 at the financing options.

18 Q Who did Ron Tilles work for?

19 A He worked directly with Martin.

20 Q Did you know for which entities?

21 A Not at that point, no, I assumed it was Retrophin.

22 Q Now, you were on the Board of Directors in the first half  
23 of 2013 you had testified; is that right?

24 A Yes.

25 Q What was the status of the Board of Directors at that

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1 point in time?

2 A It was just myself, Martin, and Steve Aselage, the three  
3 of us at the start of the year.

4 Q Were you having face-to-face regular board meetings at  
5 that point in time?

6 A No.

7 Q What, generally speaking, were the meetings like?

8 A They were either telephonic or individual discussions  
9 with Martin.

10 Q As part of these meetings, was it your understanding that  
11 there were supposed to be minutes taken of the meetings?

12 A Yes, if there was no unanimous written consent recorded.

13 Q And what was your understanding as to who was responsible  
14 for taking those minutes?

15 A Evan Greebel as our acting counsel, internal counsel.

16 Q When Mr. Greebel was acting as internal counsel and  
17 responsible for those minutes, did you receive those minutes  
18 after each board meeting to review?

19 A No.

20 Q Did you ever receive Board of Directors meeting minutes  
21 to review?

22 A In 2014.

23 Q Who circulated those minutes?

24 A The first minutes we received came in approximately July,  
25 I believe of 2014, from a new colleague Margaret



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1 Valeur-Jensen, who was appointed as our internal general  
2 counsel for the company in the middle of 2014.

3 Q So you received -- the first board minutes you ever  
4 received to review was in July 2014 from Ms. Valeur-Jensen?

5 A Yes.

6 Q Did you ever receive board minutes that had been drafted  
7 by Mr. Greebel?

8 A Yes. He sent a whole batch to us I believe around in  
9 September of 2014.

10 Q So September 2014?

11 A '14.

12 Q Now directing your attention to the July 2013 time  
13 period, did you have a telephonic Board of Directors meeting  
14 that month?

15 A Yes, I believe we did.

16 Q I'm showing you what is marked for identification as  
17 Government's Exhibit 122-43, it's tab 53 of your binder.

18 A Yes.

19 Q Do you recognize this document?

20 A Yes.

21 Q What is it?

22 A It is an e-mail from Marc Panoff, who is our recently  
23 appointed Chief Financial Officer, talking about the subjects  
24 to be covered on the Board call.

25 MS. KASULIS: Government moves this exhibit into

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1 evidence.

2 MR. AGNIFILO: No objection.

3 THE COURT: We will receive Government's Exhibit  
4 122-43.

5 (Government Exhibit 122-43, was received in  
6 evidence.)

7 BY MS. KASULIS:

8 Q If we look at Mr. Panoff's first e-mail, appears to be a  
9 addressed to you, is that Mr. Aselage's e-mail address right  
10 after -- it's from Mr. Panoff to Mr. Shkreli, and is that  
11 Mr. Aselage's e-mail address?

12 A Yes.

13 Q Then your e-mail address?

14 A Yes.

15 Q Then Evan Greebel; is that right?

16 A Yes.

17 Q And he writes, "Members of the Board, Martin and I would  
18 like to schedule a Board call for this week to update you on  
19 the financing process as well as the company's current  
20 financial position and operating plan." Do you see that?

21 A Yes.

22 Q Then if we zoom in it appears that he actually then  
23 followed up and sends some attachments to you prior to this  
24 meeting?

25 A Yes.

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1 Q So let's look at the next page of this exhibit, do you  
2 recognize this document?

3 A Yes.

4 Q What is it?

5 A It's a summary cash flow for the Retrophin company  
6 through to the middle of June 2013.

7 Q If we look at the very first line, did you review this  
8 document?

9 A Yes, it was discussed on the Board call.

10 Q The very first line of this document, does it state,  
11 "Cash balance as of December 31, 2012 is that \$11,388?

12 A Yes.

13 Q That's for the company?

14 A Yes.

15 Q If we look, if we scroll down, there is financing  
16 proceeds and then it says, "Amounts raised, gross Q1, and  
17 that's \$9,954,451," what does this line reference?

18 A That's talking about the external financing that we  
19 referenced earlier that we had just secured.

20 Q That was what you referred to as a pipe?

21 A Referred to as a pipe. I call it, \$10 million, it was  
22 close to that.

23 Q With some deduction of legal fees then the net financing  
24 is around 9.275 million; is that right?

25 A Yes.

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1 Q Below that is a section entitled, "use of proceeds"?

2 A Yes.

3 Q The first section there is note and license fee. The  
4 first line underneath that is, "Note payable to MSMB including  
5 interest quarter one and it's \$1,053,000." Do you have any  
6 understanding as to what that note payable to MSMB references?

7 A No, I don't recall that item.

8 Q Below that there is the Ligand license participation?  
9 What is the Ligand again?

10 A Ligand is the company we acquired that the license  
11 reference. This is paying the license fee for the drug we  
12 acquired.

13 (Continued following page.)

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1 Q And then if we could zoom out and look at the operating  
2 expenses section for quarter 1 and quarter 2.

3 A Yes.

4 Q If we can just go -- thank you. Perfect.

5 So does it appear here that under operating expenses  
6 it's broken out by each quarter, quarter 1 and quarter 2?

7 A Yes.

8 Q And under quarter 2 the cash balance as of June 30, 2013,  
9 what is the number listed there?

10 A Excuse me. Which?

11 Q It says -- I'm sorry. The very bottom, the very last  
12 line, cash balance as of June 30, 2013.

13 A Oh, yes. \$303,247.

14 Q And one of the line items in this quarter 2 section, do  
15 you see there MSMB settlement, (Spencer Spielberg, Sarah  
16 Hassan, Trachtenberg & Rodes), do you see that?

17 A Yes.

18 Q And it's quarter 2 and it's listing as a deduction  
19 \$548,711?

20 A Yes.

21 Q Do you recall this line item at all, Mr. Richardson, in  
22 this financial flow?

23 A I believe I -- I believe, because I read the page, I had  
24 recognized it but there was no discussion.

25 Q Do you know who Spencer Spielberg, Sarah Hassan and

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1 Trachtenberg & Rodes, who those people are?

2 A No.

3 Q So this \$303,247 cash balance as of June 30, 2013, what  
4 was your understanding of the financial state of the company  
5 at this point in time?

6 A Again, as I mentioned at the start of the year because we  
7 were going to a new strategy, we knew that we were very tight  
8 and we had to raise funds. The discussion we had on this call  
9 was recognizing that we were spending money very rapidly, and  
10 that we had to come up with a sustained funding strategy. And  
11 we also had to get on top of expenses because we were burning  
12 expenses very rapidly. That was what the discussion was on  
13 this board call. Particularly with Marc Panoff, as our new  
14 CFO, as one of first priorities he had when he came onboard.

15 Q And so that's what your recollection was the focus of  
16 this call?

17 A That's my recollection of the focus of the call.

18 Q And so now directing your attention to the September 2013  
19 time period. We can put this aside.

20 Do you recall having any board of directors meeting  
21 in that month?

22 A Which month?

23 Q September 2013 time period.

24 A Yes, I do.

25 Q Was that a telephonic meeting?

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1 A Yes.

2 Q I'm showing you what's been marked for identification as  
3 Government's Exhibits 48 -- 122-48, 122-49 and 122-50.  
4 They're tabs 54 through 56 of your binder. If you can just  
5 take a minute to look at those three exhibits and let me know  
6 if you recognize them.

7 A Yes.

8 Q What are these documents?

9 A These are documents attached for the subjects that we're  
10 going to be reviewing as a board on this call.

11 MS. KASULIS: The government moves these exhibits  
12 into evidence.

13 MR. AGNIFILO: No objection.

14 THE COURT: We will receive 122-48, 122-49 and  
15 122-50.

16 (Government Exhibit 122-48, 122-49, 122-50, was  
17 received in evidence.)

18 Q We can start with 122-48. I'm sorry, 122-49.

19 And what is this document, Mr. Richardson?

20 A This is the agenda for the call and the subjects that  
21 they intended for us to cover.

22 Q Did you, in fact, participate in this board of directors  
23 call?

24 A Yes, I did.

25 Q And there are a number of items listed here as agenda

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1 items. Which of these items do you remember discussing on  
2 this call?

3 A I believe, because part of the issue is a lot of the  
4 documents have come out rather late and we only got to a  
5 number of the items on this list. I believe we covered 2  
6 through 7. Yeah, 2 through 7 I believe we covered on the  
7 available time.

8 Q And what about the rest of the items?

9 A The rest of the items, which were the more administrative  
10 ones, Martin said he'd bring back to us as a board.

11 Q Now, item number 2 there states "Review and approve  
12 amendments to the 2012 10K and the 10Q for the quarter ended  
13 March 31, 2013."

14 What was your understanding as to why these two SEC  
15 filings needed to be amended?

16 A Our external auditors are now working with Marc Panoff,  
17 as I say, he's only been on board with us for a while, had  
18 determined that there was a handling of some items called  
19 settlement agreements that required us to restate our prior  
20 results effectively and we needed -- that needed to be  
21 captured in an amended reporting document.

22 Q And who were the external auditors?

23 A At this point it was Marcum.

24 Q And who from Marcum?

25 A The lead colleague was Ed Hackert and there was one other



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1 colleague, Sunil -- my apologies, I forget his name -- but Ed  
2 Hackert was the lead.

3 Q And what do you recall being discussed during this call?

4 A The external auditors were taking the board through the  
5 language that related to what the revisions were in the 10K.

6 Q And do you recall anything else being discussed?

7 A Well, during that discussion Martin had interjected quite  
8 forcefully when Marcum was talking about the settlement  
9 agreements. And he had said, you know, I don't understand why  
10 we're covering this again. I am MSMB and I'm standing by  
11 this. We should just move on.

12 Q When you say "standing by this," what are you referring  
13 to?

14 A In the detail of what Marcum was taking us through there  
15 were promissory notes which referred to MSMB and to Martin.  
16 So they were taking us through that language which is what he  
17 was responding through to say, yes, I'm standing by this.

18 Q What was your understanding as to the need for the  
19 promissory notes?

20 A Promissory notes were required because the way that the  
21 settlement agreements were being handled for accounting  
22 purposes is they had to move through the Retrophin books  
23 because it was changing the holdings of Retrophin  
24 shareholders.

25 Q And so what were the promissory notes for?

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1 A And the promissory notes were from both MSMB Capital and  
2 from Martin himself that they, in fact, would be making  
3 Retrophin whole on the amount that the settlement agreements  
4 represented.

5 Q Now, did the board of directors ever approve the  
6 settlement agreements that caused the restatement of  
7 Retrophin's SEC filings?

8 A No. We've never seen the settlement agreements.

9 Q And were you aware of the settlement agreements that  
10 caused the restatement of the filings prior to the fall of  
11 2013?

12 A No, not aware of the settlement agreements.

13 Q After this meeting did you have any communications with  
14 Mr. Panoff?

15 A Yes. A couple of days later I was in the office and I  
16 spoke with him because, again, he was still very new to the  
17 company. And I congratulated him to say because it was a  
18 pretty contentious call at times and I felt it was very  
19 healthy to have that kind of debate and discussion.

20 And I said to him, I know you're fairly new but I  
21 want to make sure you're on top of this is a restatement and I  
22 want to make sure you're on top of this. And he said to me,  
23 well, as long as Martin stands by the promissory note, the  
24 company is okay.

25 Q Now, in the latter half of 2013 and early 2014, what was

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1 your understanding as to whether Retrophin used consultants?

2 A Martin from time to time would bring contract type people  
3 onboard so that in some specific roles, like we mentioned Ron  
4 Tilles earlier, I believe he was on like a contract basis  
5 rather than a full employee basis. So Martin would use him  
6 from time to time.

7 Q So let's go back to Government Exhibit 122-49. If we  
8 look at the line item number 9.

9 A Yes.

10 Q It's listed there approve retaining Al Geller, Ken Banta  
11 as consultants. Do you see that?

12 A Yes.

13 Q You had stated earlier, was this one of the line items  
14 that you did not get to on the September 9, 2013 call?

15 A That's correct. We didn't get to them.

16 Q And did you recall ever reviewing or discussing the Al  
17 Geller consulting agreement?

18 A No. It had been sent in the attachments, but we never  
19 got to the discussion.

20 Q And what is your understanding as to whether the board of  
21 directors ever approved Al Geller's consulting agreement?

22 A It was -- to the best of my knowledge, it was never  
23 brought back to the board. I certainly never saw it or  
24 approved it.

25 Q What about with respect to Ken Banta?

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1 A It was never brought back to the board.

2 Q Have you ever heard of an individual named Lee Yaffe?

3 A No.

4 Q Or Efay?

5 A No.

6 Q Have you ever heard of an individual named Darren  
7 Blanton?

8 A I didn't know him, but I know I had seen his name as one  
9 of the investors earlier. So I had seen his name, but I  
10 didn't know him.

11 Q Did the Retrophin board of directors ever approve a  
12 consulting agreement for Mr. Blanton?

13 A No.

14 Q Or a consulting agreement for Mr. Yaffe?

15 A No.

16 Q Have you ever heard of an individual named Steve  
17 Rosenfeld?

18 A No.

19 Q Did the board of directors ever approve a consulting  
20 agreement for Mr. Rosenfeld?

21 A No.

22 Q Now, I'm showing you what's been marked for  
23 identification as Government Exhibit 122-53. It's tab 57 of  
24 your binder.

25 Do you recognize this document?

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1 A Yes.

2 Q What is it?

3 A It is an email from Marc Panoff to the board with the  
4 board agenda and attachments related to the board agenda.

5 MS. KASULIS: And the government moves this exhibit  
6 into evidence. I'm sorry.

7 MR. AGNIFILO: No objection.

8 THE COURT: We receive Government's 122-53.

9 (Government Exhibit 122-53, was received in  
10 evidence.)

11 Q Is this in relation to a board of directors meeting on  
12 November 6, 2013?

13 A I believe the meeting was actually the 8th.

14 Q Thank you.

15 A I'm just looking at the agenda.

16 Q Thank you.

17 And so this is an email that was sent prior to the  
18 meeting; is that correct?

19 A That's correct.

20 Q In the recipient line it's sent from Marc Panoff and  
21 received by a number of individuals. Listed there is a Neal,  
22 N-e-a-l. Do you know who Neal is?

23 A This is Neal Golding who has just joined us on the board  
24 as one of our first new board members.

25 Q Who is Neal Golding?

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1 A As I say, we had interviewed and spoken with him and  
2 appointed him to the board. He had a very strong background  
3 in finance and had previously sat on audit committees. So he  
4 was a great addition to bring to our board and he immediately  
5 headed up our audit committee as we formed it.

6 Q And it appears that yourself, Mr. Aselage and Mr. Shkreli  
7 are listed there with a cc to Evan Greebel and then two  
8 individuals, Ed Hackert and Sunil Jain.

9 Who are those two individuals?

10 A Those are the two individuals I mentioned earlier from  
11 our external auditor firm Marcum.

12 Q If we turn the page to the actual agenda.

13 A Yes.

14 Q If you look at line, just line item number 4 there.

15 A Yes.

16 Q And it says discuss appointment of Dr. Jeff Paley's  
17 appointment to the board.

18 A Yes.

19 Q Who is Jeff Paley?

20 A He was the next candidate that we'd been speaking to to  
21 join the board. He was medical director in his own right and  
22 had very good experience in investing in the -- in the  
23 healthcare space.

24 Q And we can put this document aside.

25 You had mentioned in the course of your testimony

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1 today about getting documents related to a board meeting very  
2 close in time to the meetings themselves; is that right?

3 A Yes.

4 Q Did you express any concern about that?

5 A Yes, I mentioned that a number of times. And  
6 particularly I was reassuring when Marc Panoff came onboard,  
7 because he was starting to add some of the rigor we were  
8 lacking before, and I had asked, especially with these large  
9 documents, that we need at least a day in advance if we're  
10 going to credibly review them before we have a discussion.

11 Q I'm showing you what's been marked for identification as  
12 Government Exhibit 122-58. And it's tab 58 of your binder.

13 A Good.

14 Q Do you recognize this exhibit, Mr. Richardson?

15 A Yes.

16 Q What is it?

17 A It is an email from one of Evan Greebel's associates at  
18 Katten starting to send -- starting to talk about the board  
19 call and my response.

20 MS. KASULIS: The government moves this exhibit into  
21 evidence.

22 MR. AGNIFILO: No objection.

23 THE COURT: We receive Government's Exhibit 122-58.

24 (Government Exhibit 122-58, was received in  
25 evidence.)

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1 Q And if we look at this, the bottom email of the two  
2 emails in this exhibit, you had mentioned -- who is David  
3 Kravitz?

4 A He's an associate at the Katten, the external law firm  
5 that Evan Greebel worked at.

6 Q And the date on this email is January 6, 2014?

7 A Yes.

8 Q And he writes, All, attached please find the agenda  
9 today's board of directors meeting along with copies of the  
10 documents that we will discuss. Regards, David.

11 And in response, what do you write there in response  
12 to Mr. Kravitz?

13 A I'm writing to him and then the rest of the group saying,  
14 Guys, I just landed back in New York City 50 minutes ago after  
15 an agonizing series of delays. We need to set a standard for  
16 issuing these materials ahead of board calls so we can conduct  
17 an adequate review of all materials. Getting them straight  
18 ahead of a call does not allow us to -- does not allow us to  
19 fill our oversight role adequately. I suggest 48 hours  
20 minimum on most items. As of today's call, can we be clear on  
21 the items that are time sensitive for your required submission  
22 deadlines?

23 Q And did the situation improve after this point in time?

24 A Slowly it did. Not all the time, but slowly it did.

25 Q Now, I want to direct your attention to the 2014 time



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1 period at Retrophin.

2 A Yes.

3 Q Were you still on the board of directors at that point in  
4 time?

5 A Yes, I was and Jeff Paley had now joined as well. So  
6 there were five of us on the board.

7 Q So just to be clear, who were the five board members of  
8 Retrophin at the beginning of 2014?

9 A Myself, Martin, Steve Aselage, Neal Golding and now Jeff  
10 Paley as well.

11 Q And so at the beginning of 2014 what was your  
12 understanding as to the status of Retrophin at this point in  
13 time?

14 A It was now a very exciting time for us. We'd gone  
15 through 2013, as we said before, building out our  
16 capabilities. And at this point it was a very exciting time  
17 because Martin had started to secure some very interesting  
18 drug candidates to bring into our Retrophin company, and he'd  
19 also started to move forward to move us for NASDAQ listing,  
20 which really would be a very important big step for our  
21 company. But to become NASDAQ listed we also had to have a  
22 secure, you know, \$40 million in new funding which is one of  
23 the requirements to secure NASDAQ listing. So it was a very  
24 exciting time.

25 Q Now, directing your attention to the February 2014 time

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1 period. Do you recall a board of directors meeting that  
2 month?

3 A Yes, this, in fact, was an offsite meeting and really the  
4 very first time the board was going to meet with the  
5 management team in a fully -- in a very intense meeting  
6 format.

7 Q And was this an actual face-to-face meeting of the board?

8 A This was a face-to-face meeting.

9 Q And where did that meeting occur?

10 A That happened here in Manhattan, a venue at -- a venue  
11 that has meeting rooms on 14th Street here in Manhattan.

12 Q And what is that location called?

13 A It's called the Norwood Club.

14 Q I'm showing you what's been marked for identification as  
15 Government's Exhibit 122-64 and 122-70. It's tabs 59 and 60  
16 of your binder.

17 Do you recognize these documents?

18 A Yes, I do.

19 Q What are they?

20 A These are the agendas with the supporting documents for  
21 this offsite meeting. It was going to be a full-day meeting  
22 and a number of us had worked very hard to put together the  
23 agenda and the subjects we needed to discuss. And then the  
24 next attachment is a summary of who would be the attendees for  
25 the various parts of the day.

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1 MS. KASULIS: Government moves these two exhibits  
2 into evidence.

3 MR. AGNIFILO: No objection.

4 THE COURT: We receive 122-64 and 122-70.

5 (Government Exhibit 122-6 and 122-70, was received  
6 in evidence.)

7 Q Let's go to 122-70 first.

8 A Yes.

9 Q And what is this document?

10 A This is Martin's assistant -- it's coming from Martin's  
11 assistant at the company who's laying out who's attending the  
12 respective -- we had some board committee meetings first, and  
13 then we had the main meeting at 10:30 so confirming who would  
14 be attending each of those respective meetings.

15 Q So if we look at the 8:30 a.m. time slot, the attendees  
16 listed there, it's Mr. Aselage, Mr. Golding, Mr. Greebel,  
17 Mr. Panoff, Mr. Richardson and Mr. Shkreli?

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q What do you recall about this 8:30 a.m. meeting?

22 A This was one of the board committee meetings, but,  
23 unfortunately, we had to delay it because Martin had been  
24 delayed.

25 Q Do you have an understanding as to why Martin had been

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1 delayed?

2 A Well, part of the exciting news is that he had secured  
3 the previous day, he'd secured the acquisition of two new  
4 drugs and he was proceeding to get the announcement ready for  
5 that to go. So in making that happen, he was delayed in  
6 coming to this meeting.

7 Q And did you have an understanding when you -- did  
8 everyone arrive at 8:30 a.m., did Martin give you notice that  
9 he would be late?

10 A No, unfortunately not.

11 Q What was your reaction to that?

12 MR. AGNIFILO: I'm going to object to his reaction  
13 to Martin being laid.

14 THE COURT: Overruled.

15 You can answer it, sir.

16 A It was, you know, it was rather frustrating because,  
17 again, a number of us had put extensive time together in  
18 putting this meeting together. And while Martin was clearly  
19 working on exciting news, I was disappointed that he hadn't  
20 taken the time to give us a quick call so that we could redo  
21 the agenda meaningfully and didn't waste too much time.

22 Q And let's look back -- oh, just before we move on from  
23 this.

24 With respect to the 10:30 a.m. meeting that you had  
25 stated here that there would be more individuals who would be

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1 added at this point. If we look at this list here, the list  
2 includes Horacio Plotkin.

3 Who is Horacio Plotkin again?

4 A He's the chief medical officer for the company.

5 Q And Srinivas Rao, who's he?

6 A Srinivas was the leader of a neuroscience group that we  
7 had acquired in I believe December of the year. It was a new  
8 arm to our company that Martin was very enthusiastic about,  
9 and Srini was the head of that entity.

10 Q And is Ken Banta listed here as well?

11 A Yes. Ken had helped craft the meeting agenda as well.

12 Q Now, if we look at Government Exhibit 122-64 and if we  
13 look at the second page of this document. What is this  
14 document here?

15 A This is now the actual agenda with the subjects that we  
16 will be covering for the main meeting of the day which is  
17 starting at 10:30 through the afternoon.

18 Q And were you involved in preparing this document?

19 A Yes, I was.

20 Q And if we go to the page of this, the third page of the  
21 agenda ending in Bates number 935, can we just look at that  
22 page.

23 A Yes.

24 Q This appears to be the agenda for an afternoon session of  
25 the board of directors meeting; is that right?

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1 A Yes, the meeting carried on through the day. So we just  
2 took a lunch break and carried the meeting on through the  
3 afternoon.

4 Q And then if you see here there's a Corporate Governance  
5 and Risk Management section?

6 A Yes.

7 Q Underneath it it states distribute D&O questionnaires and  
8 then cash management investment policy. And the first bullet  
9 point being discuss investment policy parameters.

10 A Yes.

11 Q Exhibit C and D.

12 What is your understanding of what that bullet point  
13 was referring to?

14 A Again, part of -- now that we're NASDAQ listed, we needed  
15 to put in place rigorous policies and guidelines across many  
16 of the ways the company was operating. And this is one of the  
17 subjects that we needed to discuss as a board to make sure  
18 that we were all aligned.

19 Q When you're talking about investment policy parameters,  
20 was there anything in particular that was referring to?

21 A Once we got into the discussion I think there are a  
22 number of subjects that came to bear.

23 Q Such as?

24 A Any trading, any trading that we were doing, any trading  
25 that the company was doing with shareholder money.

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1 Q So what are you referring to, trading that the company  
2 was doing with shareholder money?

3 A Well, as part of the discussion when we got into this,  
4 we, as a board, were hearing for the first time that the  
5 business development team was actually trading company money,  
6 shareholder money. Effectively, attempting to make deals if  
7 you'd like -- well, no. I'm trying to think how to express  
8 it.

9 Well, no. The fact the business development team  
10 was trading, you know, doing trades as if they were, you know,  
11 a hedge fund in their own right if you like.

12 Q And who was leading the business development group?

13 A That was -- it was accountable to Martin at the time.

14 Q And this was the first time you had been hearing about  
15 this?

16 A Yes.

17 Q Was there anything discussed with respect to that  
18 trading?

19 A It was a very healthy discussion in the board that we  
20 engaged with Martin on and that we had laid out that we need  
21 to put a policy in place around this because this is  
22 shareholder money. You know, we're no longer a fund. You  
23 know, we're a company operating, a publicly-traded company and  
24 we had to make sure that anything happening in that area was  
25 very, very small and very low risk. So it was a very healthy

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1 discussion with Martin at the meeting.

2 Q If I can direct your attention to another attachment.  
3 It's ending in Bates number 11939 of this document.

4 Do you recognize this attachment?

5 A Yes.

6 Q What is it?

7 A I believe this is, again, this is, again, for -- yeah,  
8 this is the requirement for NASDAQ listing. Now that we're  
9 NASDAQ listed, both board of directors and executive officers  
10 had to complete this questionnaire for submission to NASDAQ.

11 Q And did you, in fact, complete this questionnaire?

12 A Yes, I did.

13 Q And your understanding is that all the board of directors  
14 and executive officers had to complete this questionnaire?

15 A Yes. It was a NASDAQ requirement.

16 Q And directing your attention to Bates number ending in  
17 947, that page. The 7.6.1 question, it states "Have you been  
18 or are you presently the subject of an investigation by the  
19 SEC, the Commodities Futures Trading Commission, FINRA or any  
20 other regulatory or self-regulatory organization that could  
21 result in the finding of a violation of any federal or state  
22 securities or commodities laws"?

23 Do you see that?

24 A Yes.

25 Q And then you have to indicate either yes or no?



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1 A Yes.

2 Q And did you complete this part of the questionnaire as  
3 well?

4 A Yes, I did.

5 Q And your understanding is that everyone -- the board of  
6 directors and all the executive officers completed this as  
7 well?

8 A Yes.

9 Q So putting these documents aside. We had spoken earlier  
10 about Horacio Plotkin.

11 Do you recall whether he participated in the board  
12 of directors meeting on that day at the Norwood Club?

13 A Yes, he did.

14 Q And what do you recall about his participation?

15 A He gave an update on one of our important drugs in the  
16 pipeline. And during that discussion, because he had to -- he  
17 was asked to give us an update on the clinical trials, and  
18 during that discussion Martin got rather upset because  
19 Horacio's response was admittedly rather vague and a bit, you  
20 know, lacks emergency. But Martin was very forceful with him  
21 in the meeting and he used some pretty forceful language  
22 expressing his disappointment and it did create quite an  
23 atmosphere in the room. I was facilitating the meeting and  
24 stepped in and said we need to followup on this item, but  
25 let's keep this, let's keep this, you know, at an appropriate

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1 level.

2 Q And did Ken Banta participate in that meeting?

3 A Yes, he did. Not in the committee meetings, but he  
4 participated in the main meeting.

5 Q Did you recall any discussions you had with Mr. Banta?

6 A Yes. Ken had come up to me during one of I think the  
7 lunch break and had asked me, because he knew I was on the  
8 board, and he had asked me do I know the status of his  
9 consulting agreement.

10 Q And what did you state?

11 A I said, no, it had been brought to the board, but we  
12 hadn't got to it and he needed to go back to Martin for Martin  
13 to decide when he was going to bring it back to us.

14 Q Do you ever recall approving a consulting agreement for  
15 Mr. Banta?

16 A No. In fact, Ken had even called me I think two weeks  
17 after this meeting with the same question.

18 Q Now, do you recall Evan Greebel being present at this  
19 board of directors meeting at the Norwood Club?

20 A Yes, he was.

21 Q Do you recall him participating at all?

22 A Yes.

23 Q What do you recall?

24 A Well, I met, you know, I met him the night before because  
25 we had a dinner the night before where we all joined together.

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1 I met him there. And then I remember him at the meeting. And  
2 now, of course, because he is acting internal counsel and I do  
3 see him taking the minutes as he should be.

4 Q With respect to the dinner, what do you recall about that  
5 dinner?

6 A At the dinner because it was the first time now the full  
7 board with its new members was meeting with many of the  
8 management team who were also new. So it was a very exciting  
9 time and very social time. And we sat at a long table, and I  
10 happened to sit next to Evan Greebel. And in that discussion  
11 I had said to him, because I hadn't had much personal time  
12 with him before, you know, reminding him that, you know,  
13 again, not only was he external counsel, he was acting  
14 internal counsel but he was also acting company secretary.  
15 And I wanted to make sure he understood that he had to have an  
16 independent line to the board. If there's anything that he  
17 felt the board ought to be made aware of, I restated to him  
18 there that he needed to make sure that he accessed the board  
19 if it was necessary. And I also reminded him that he, as  
20 acting company secretary, he had to take minutes and make sure  
21 that they were circulated.

22 MS. KASULIS: Your Honor, this may be a good time to  
23 take a midmorning break.

24 THE COURT: All right. Let's let the jurors take a  
25 break.

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1           Please leave your notes on the chair and don't  
2 discuss the case.

3           Thank you for your attention.

4           (Jury exits the courtroom.)

5           THE COURT: All right. Let's take a few minutes.  
6 Please return by a quarter of. Thank you.

7           (Recess taken.)

8           (Continued on the following page.)

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1 (Jury enters the courtroom.)

2 THE COURT: All the jurors are present, and as soon  
3 as our witness returns, we will continue.

4 MS. KASULIS: Thank you, Your Honor.

5 DIRECT EXAMINATION (CONTINUED)

6 BY MS. KASULIS:

7 Q Okay, Mr. Richardson. Now, after this February 14th,  
8 2013 board of directors meeting that we've been speaking  
9 about, did you have any further communications with the  
10 defendant regarding that business development group that  
11 you -- that we had discussed earlier?

12 A Yes. I had met Martin to debrief on the meeting as a  
13 whole, and that was one of the subjects covered.

14 Q I'm showing you what's been marked for identification as  
15 Government Exhibit 122-71. And it's Tab 61 of your binder.

16 Do you recognize this document?

17 A Yes, I do.

18 Q And what is it?

19 A It's an email from Martin to an external gentleman,  
20 copying myself, Marek Biestek and Marc Panoff.

21 Q And what is the date on this email?

22 A It's dated February the 14th, 2014.

23 MS. KASULIS: Government moves this exhibit into  
24 evidence.

25 MR. AGNIFILIO: No objection.

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1 THE COURT: We receive Government Exhibit 122-71 in  
2 evidence.

3 (Government Exhibit 122-71, was received in  
4 evidence.)

5 Q It appears to be an email from Mr. Shkreli to you,  
6 marc@sixthmanresearch.com.

7 Do you see that?

8 A Yes.

9 Q And who is that?

10 A I didn't know him ahead of this email and Martin was  
11 introducing me to him through this email.

12 Q Okay. And in the body of the email, Mr. Shkreli writes:  
13 Our board discussed the Retrophin investment program and the  
14 feedback missed. In general, the BOD -- is that in reference  
15 to the board of directors?

16 A Yes.

17 Q Was intrigued by engaging in a unique and different  
18 approach, parens, the program is up over 3 million, a material  
19 amount to Retrophin, but was also concerned about risk. After  
20 some sole searching and chatting with you, I think we've  
21 arrived at good place. Three way sign-off on all investments  
22 and a strong focus by everyone but me on the portfolio.  
23 You're right that I don't have the time to do this. I don't  
24 need training, but it is stellar tool for my team to  
25 investigate investments. So we have systematically exited

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1 many of the investments in taking down the risk. I think  
2 there should be more investment but at less size. This would  
3 lower the risk even further, and I am committed to the  
4 portfolio being exactly what I described, a tool to teach, not  
5 a tool to scratch my itch of needing to make trades.

6 What was your understanding as to what Mr. Shkreli  
7 was referring to here?

8 A And that really catches the spirit of what we discussed a  
9 at the Norwood Club meeting. This is what the board said, we  
10 shouldn't be actively trading with shareholder money, but if  
11 you want to use it in a very narrowed and defined way as a  
12 trading tool, that's a very useful potential vehicle to use.  
13 And now he's reaffirming that's the spirit of how he wants to  
14 proceed in agreement with what the board had discussed with  
15 him.

16 Q And following this, is that, in fact, the way that  
17 Mr. Shkreli proceeded?

18 A That certainly is our understanding.

19 Q And you had mentioned that you actually met with  
20 Mr. Shkreli following the Norwood Club meeting; is that right?

21 A Yes, I think it was about a week later from memory.

22 Q And why did you meet with Mr. Shkreli after the Norwood  
23 Club meeting?

24 A It was such an involved meeting and I wanted to make sure  
25 that I was giving him feedback and how it went and feedback I

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1 wanted to share with him. And we also had an executive  
2 session that he wasn't party to at the Norwood Club meeting,  
3 and I wanted to give him the headlines that I agreed with the  
4 board, I would share with him that as well.

5 Q And what's an executive session?

6 A It's an executive session is where the independent  
7 directors can chose to meet by themselves without having any  
8 executives of the company there, including Martin, of course,  
9 who was an executive CEO. So it's effectively a closed  
10 session of the independent directors and whoever they chose to  
11 invite.

12 Q And did you share what had been discussed in the  
13 executive session with Mr. Shkreli?

14 A Yes. Yes, I did.

15 Q And what do you recall discussing with the defendant at  
16 that meeting?

17 A Well, I know we went over -- the meeting as a whole at  
18 Norwood Club went very well. The overall meeting as whole  
19 went well. But I did share feedback with him about the one or  
20 two things that became sticky; you know, how he handled the  
21 Horacio Plotkin situation and trying to couch him about how to  
22 handle that differently. Reaffirming that the investment  
23 proposal would be handled. Of course, it would be handled the  
24 way that we discussed at board meeting. And there are a  
25 couple of other subjects. I don't recall a list at this



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1 point. But those are the two principal ones that I wanted to  
2 share with him.

3 Q And let me direct your attention to Government  
4 Exhibit 122-72, if you want to refer to this document to see  
5 if it refreshes your recollection.

6 A Oh, yes. Yeah, this -- yes.

7 Q And do you recall anything else that you discussed with  
8 the defendant at that meeting after reviewing this document?

9 A Yes, this is a list that I compiled all ready for the  
10 discussion. I don't believe we got to all of it, but we  
11 certainly did discuss some of the items under one; you know,  
12 one and two.

13 Q And what did you discuss with the defendant at this point  
14 in time regarding any use of social media?

15 A This was a time when, you know, some of the board in  
16 particular were concerned about Martin's use of Twitter. And  
17 my discussion with him was, you know, again, as you can see  
18 here, you know, you are a little bit younger profile and he  
19 wants to be a modern CEO, but he has to respect that he's a  
20 public CEO. And we agreed that he would go away and come back  
21 with an approach that we as a board could agree with him  
22 what's the appropriate use for him, if he's going to be on  
23 Twitter attached to Retrophin.

24 Q Did you talk at all about Mr. Shkreli making sure to  
25 inform the board of any development?

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1 A Yes, one of the items you see here under point C1, look  
2 for earlier board engagement.

3 Q Excuse me. I'm sorry, this is not in evidence,  
4 Mr. Richardson, it's just to refresh your recollection.

5 So does it refresh your recollection at all about  
6 discussing anything with Mr. Shkreli during this meeting  
7 regarding engaging with the board of directors?

8 A Yes. We wanted to make sure all press releases and  
9 any -- any future rejections where he might talk about the  
10 company performance in the future, we wanted to make sure that  
11 we as a board he consulted with us first before anything was  
12 released to the media.

13 Q And what -- what are you referring to there about  
14 releasing information to the media before informing the board?

15 A There were one or two press releases and one or two, I  
16 think he made a Twitter reference some volumes, things that we  
17 as the board hadn't seen ahead of time, and we wanted to make  
18 sure he wasn't, you know, putting the company at risk by  
19 disclosing anything that wasn't public information yet.

20 Q And how -- what was your observation of how Mr. Shkreli  
21 reacted to this meeting?

22 A As I say, it's the first time that I think we had the  
23 whole management, senior management team and the board  
24 together and, you know, Martin likes to operate as an  
25 entrepreneur. And I think it's fair to say that while the

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1 meeting doing go well, it wasn't his favorite environment. He  
2 did find it that while he engaged well on the discussions, you  
3 know, there was clearly a bit of angst that here was a board  
4 that's going to be quite actively, you know, working with you  
5 and overseeing you.

6 Q And that was in relation to the board of directors  
7 meeting at the Norwood Club, or at your meeting with him on,  
8 you know, shortly thereafter?

9 A No, I'm referring to, you know, the discussion I'm having  
10 with him about the Norwood Club meeting.

11 Q Okay. Did you inform the board that you had had a  
12 discussion with Mr. Shkreli after the Norwood Club meeting?

13 A Yes.

14 Q I'm showing you what's been marked for identification as  
15 Government Exhibit 122-33 -- I'm sorry, 122-73. It's Tab 63  
16 of your binder.

17 A Yes.

18 Q Do you recognize this exhibit?

19 A Yes.

20 Q And what is this?

21 A It's an email from me to my fellow board members, and  
22 copying Marc Panoff and Evan Greebel.

23 Q And that's dated February 20th, 2014?

24 A That's right.

25 MS. KASULIS: The government moves this exhibit into

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1 evidence.

2 MR. AGNIFILIO: No objection.

3 THE COURT: We received 122-73.

4 (Government Exhibit 122-73, was received in  
5 evidence.)

6 Q And I'll just direct your attention to the top of the  
7 last email.

8 A Yes.

9 Q No, I'm sorry, the last in the chain on the first page.

10 Thank you, Ms. Zellan.

11 This is an email to the various board members and  
12 Mr. Greebel and Mr. Panoff and yourself; is that right?

13 A Yes.

14 Q And it's dated February 20th, 2014?

15 A Yes.

16 Q You write: Hi all, I hope your week is going well.  
17 Thanks again for a productive board session last week. Quite  
18 an agenda. Particular thanks to Neal and Steve for making the  
19 treck through crazy winter weather.

20 Was it your understanding that Neal Golding and  
21 Steve Aselage had traveled to attend the Norwood Club board  
22 meeting in February of 2014?

23 A Yes, they did, and it was a major, major snow storm is  
24 what it's referring to. They courageously fought through it  
25 and made the meeting.

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1 Q Now right under that you said: Confirming on Monday our  
2 first call will be an executive session and de facto comp  
3 committee followup where, and then you state: I will update  
4 you on my excellent meeting with Martin following our board  
5 discussions last week. And then we will discuss CEO  
6 compensation. I am meeting with the compensation consultant  
7 this Friday and we have written stuff to share with you.

8 And so with respect to an excellent meeting this  
9 week with Martin, what meeting are you referring to?

10 A I'm referring to the meeting where I met him on the 19th.

11 Q Now, with respect to this first CEO compensation, did  
12 you, in fact, review Mr. Shkreli's compensation during this  
13 time period?

14 A Yes, I did, because with the board now fully functioning,  
15 I was actually the head of the compensation committee. And  
16 one of my accountabilities was CEO compensation and putting  
17 that together.

18 Q I'm showing you what's been marked for identification as  
19 Government Exhibit 122-74. It's Tab 64 of your binder.

20 A Yes.

21 Q And do you recognize this document?

22 A Yes, I do.

23 Q And what is it?

24 A It's confirmation of the compensation for the performance  
25 year 2013 for Martin.

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1 Q And is that your signature at the bottom there?

2 A Yes, it is.

3 MS. KASULIS: The government moves this exhibit into  
4 evidence.

5 MR. AGNIFILIO: No objection.

6 THE COURT: We received government 122-74.

7 (Government Exhibit 122-74, was received in  
8 evidence.)

9 Q And this was CEO compensation for performance year 2013;  
10 is that right?

11 A Yes.

12 Q And that's for Mr. Shkreli?

13 A Yes.

14 Q And can you just generally explain what this document  
15 reflects?

16 A It reflects what the board has decided to compensate  
17 Martin for -- for that year, which includes the incentive plan  
18 going forward as well.

19 Q And total cash compensation was, as set forth in the  
20 middle here, was \$550,000 --

21 A Yes.

22 Q -- is that right?

23 And the very -- the top it states, Martin Shkreli,  
24 comma, CEO and founder, and then states: In recognition of  
25 the exceptional performance Martin delivered in setting

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1 Retrophin on to a dynamic and broad-based track for market  
2 impact, and for starting to build a world class team that  
3 shares our vision. And then the board approved this  
4 compensation; is that right?

5 A Yes, it did.

6 Q Okay. You can put that aside.

7 Now, did there come a point in time when you spoke  
8 with the defendant regarding an SEC investigation?

9 A Yes, that was in March of 2014.

10 Q And that was after this compensation had been approved;  
11 is that right?

12 A Yes.

13 Q For Mr. Shkreli?

14 What happened? Can you please describe that  
15 discussion to the jury.

16 A I believe the initial discussion Martin had with me is  
17 that he had framed that a disgruntled employee had filed a  
18 complaint with the SEC, Securities and Exchange Commission,  
19 and this related to MSMB Capital. And that would I  
20 consider -- as an investor in MSMB Capital, would I consider  
21 going to be voluntarily interviewed by the SEC to answer any  
22 questions or -- or that they might have. Because he felt that  
23 someone, one or two of the investors, myself included went,  
24 that would nip this issue in the bud and it would be closed  
25 down quickly.

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1 Q And so the first that you learned of this SEC  
2 investigation was this conversation with Mr. Shkreli?

3 A Yes.

4 Q And what was your reaction to your conversation with the  
5 defendant?

6 A Well, again, I was seeking at the time reassurance that  
7 this indeed was a small issue and, again, one that could be --  
8 you know, that didn't have bigger ramifications and was  
9 certainly only MSMB. And he assured me it was and -- and I  
10 said I would be willing to be interviewed, you know, on that  
11 basis.

12 Q And what happened next?

13 A The next thing that followed is I got a letter from the  
14 SEC inviting me to come or call in for an interview.

15 Q And did you schedule an interview with the SEC?

16 A Yes, I did.

17 Q And when was that?

18 A The end of March, 2014.

19 Q Prior to that meeting, did you have any discussions  
20 regarding the SEC investigation with anyone?

21 A Yes, I did. I had a discussion with both Evan Greebel,  
22 the counsel, and with Martin the day before I believe I was  
23 going.

24 Q And what do you recall regarding your discussion with  
25 Mr. Shkreli?



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1 A Again, I checked in with him to make sure I had all the  
2 facts I needed. And I said is there anything else I need to  
3 be aware of? And he said, No, there were a couple of periods  
4 in the fund, this is the MSMB fund, where we weren't doing so  
5 well, but I covered it. So just be aware of that. And that's  
6 when he said to me going into the interview.

7 Q And what do you recall about your discussion with  
8 Mr. Greebel?

9 A Again, I was checking with him, my concern at that point  
10 was to make sure this was indeed only MSMB and had nothing to  
11 do with Retrophin. Because I was right that it might have  
12 disclosure requirements if indeed it touched on Retrophin, and  
13 he assured me it was only to do with MSMB.

14 Q And were you, in fact, interviewed by the SEC?

15 A Yes, I did go in person to be interviewed by them.

16 Q And what was your reaction to that interview?

17 A The interview as a whole went pretty well and -- and, you  
18 know, there were couple of surprises in there that took me  
19 back, as they asked me specifically if I knew about a Merrill  
20 Lynch lawsuit, which I didn't know. I told them I didn't know  
21 about that.

22 And they also talked about, do you know about any  
23 monies being shared with MSMB investors to do with Retrophin.  
24 And I also said I wasn't aware of that, you know, other than  
25 my own case. You know, I knew there were going to be

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1 adjustments made for me.

2 Q And what did you do following the interview?

3 A When I came back from the interview, I immediately called  
4 Evan Greebel. As I said, my first concern was in the  
5 discussion, while there was nothing specific in the  
6 discussion, other than these two points I referenced, the one  
7 that surprised me was, first of all I said the SEC referenced  
8 Retrophin. They did say the scope of their review wasn't  
9 Retrophin, but they referenced it. And I double checked with  
10 Evan again, because I called him immediately when I got back,  
11 that this is definitely not to do with Retrophin, he said, No.  
12 And I said, secondly, why am I hearing about a Merrill Lynch  
13 lawsuit for the first time?

14 MR. AGNIFILIO: I'm going to object to this entire  
15 line of question and answer. I just don't know what it  
16 elicits at all.

17 THE COURT: If we can have a sidebar proffer,  
18 please.

19 (Continued on the next page.)

20 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 MR. AGNIFILIO: My objection is it's based on  
2 relevance and it's also prejudicial. I don't know what the  
3 relevance of what he said to the SEC and what he went back and  
4 said to Evan about what he said to the SEC, and what his  
5 expectations were in talking to the SEC and then going back to  
6 Evan and saying that my expectations in talking to the SEC  
7 weren't met. It's just unduly prejudicial and I find it's  
8 irrelevant.

9 MS. KASULIS: Your Honor, part of this, the rest of  
10 this, I expect his testimony to be about the processes of  
11 Mr. Shkreli as the CEO of Retrophin; that they opened on this  
12 issue, that these individuals stole the company from Martin,  
13 and we have to lay the ground work as to the decision that  
14 they made to remove Mr. Shkreli. It's also effect on the  
15 listener, what he does next with respect to learning that  
16 information from the SEC interview. And so we believe that,  
17 you know, that exceptions to the hearsay rule apply and that  
18 it is, in fact, relevant to this period of time with respect  
19 to the matter regarding the defendant.

20 THE COURT: All right, and at this point is the  
21 government alleging that Mr. Greebel is discussing with --

22 MS. KASULIS: Yes.

23 THE COURT: -- Mr. Shkreli --

24 MS. KASULIS: Yes.

25 THE COURT: -- with regard to the Retrophin account?

SIDEBAR CONFERENCE

1 MS. KASULIS: Yes.

2 MR. BRAFMAN: Your Honor, the issue of what he said  
3 to Mr. Greebel and what Mr. Greebel says to him is a separate  
4 issue than what the SEC says to him. We have someone from the  
5 SEC essentially testifying through his discussion with  
6 Greebel.

7 THE COURT: No, it's a discussion between this  
8 witness and Mr. Greebel, an alleged coconspirator charged in  
9 Count Seven and Eight about information he learned from the  
10 SEC and asking the attorney for information about, point one  
11 was the Merrill Lynch, and also use of Retrophin money  
12 purportedly for MSMB investors.

13 So I think it's fair ground and it's directly  
14 relevant to the charges, and I don't believe it's unduly  
15 prejudicial to Mr. Shkreli. So I will overrule the objection.

16 MR. AGNIFILIO: We know the SEC investigation was  
17 only on MSMB, and there's no allegation that Greebel as a  
18 coconspirator knew of that investigation.

19 MS. SMITH: The SEC sent documents to Retrophin as  
20 well, and they have -- they are familiar with the charges in  
21 this case, so while it may have begun as a focus on MSMB, it  
22 certainly developed and produced communications between the  
23 SEC and Mr. Greebel -- I'm sorry, Mr. Greebel's associate or  
24 fellow partner, Mr. Rosensaft, that shows that the  
25 investigation proceeded from MSMB into what was Retrophin's

## SIDEBAR CONFERENCE

1 connection to what had happened with the MSMB investors. So  
2 by this point in 2014, the SEC investigation has proceeded,  
3 and like I said, they did send document requests to Retrophin  
4 directly.

5 MR. AGNIFILIO: You know, I don't think there's been  
6 a showing by preponderance that Evan Greebel is a  
7 coconspirator. Basically the evidence in this record that  
8 Evan Greebel is a coconspirator for purposes of having these  
9 discussions with this witness being the exception to the  
10 hearsay rule. I think there's layers of hearsay.

11 THE COURT: Okay, but what I'm seeing is that  
12 Mr. Richardson, as a member of board and has a very close  
13 relationship with Mr. Shkreli, consults with him in his  
14 capacity as a board member and as a friend; he's meeting with  
15 him, he's mentoring him, he's giving him tips on how to  
16 conduct himself in a board meeting. He's somebody who is  
17 taking the part himself, both as a board member and because of  
18 his relationship with Mr. Shkreli, to find out what is going  
19 on as a result of Mr. Shkreli's request that he show up and  
20 basically meet with the SEC on his behalf. If he learned from  
21 him initially -- that he otherwise wouldn't have learned if  
22 Mr. Shkreli hadn't asked him to meet, and he's consenting now  
23 with Mr. Greebel, who he testified was counsel to Retrophin  
24 and he said, look, the SEC is raising issues or concerns about  
25 Retrophin money and its use with MSMB investors. So I think

SIDEBAR CONFERENCE

1 it certainly appropriate for him to tell the jury what  
2 happened as a result of these interrelated concerns.

3 So on the undo prejudice issue, I don't think that  
4 would -- I would say in terms of its probative value to the  
5 counts, outweighs the prejudice. I don't believe it would  
6 about prejudicial, much less unduly prejudicial, but anyway.

7 MR. AGNIFILIO: Okay.

8 MS. KASULIS: Okay, thank you, Your Honor.

9 THE COURT: Thank you.

10 (End of sidebar conference.)

11 (Continued on the next page.)  
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1 (In open court; Jury present.)

2 BY MS. KASULIS:

3 Q So you had stated, Mr. Richardson, that you had called  
4 Mr. Greebel after you met -- after you met with the SEC; is  
5 that correct?

6 A Yes.

7 Q Did you also have any discussions with the defendant?

8 A Yes. Yes, I did. A few days later.

9 Q And where did you have those discussions?

10 A I believe they were in the office again.

11 Q What do you recall about that discussion?

12 A I raised it and said generally the interview went, you  
13 know, as I anticipated as he laid out, but with one big  
14 exception, that he raised a Merrill Lynch lawsuit and what was  
15 that. And why didn't I know about it. And he had said to me,  
16 yes, that was -- that was one of the areas where we had some  
17 problems I referenced, but I didn't tell you the specifics  
18 because I didn't want to come across as a failure to you on  
19 that.

20 Q And what was your reaction to that explanation?

21 A You know, we talked it through a little bit and I  
22 understood, you know, at the end of the day I asked him, I  
23 said, Are you telling me there's nothing inappropriate in here  
24 and that everything was covered, and that's how we left it,  
25 yes. Yes, while it was a problem at the time, I covered it

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1 and we moved on, and you saw that in your own investment.

2 Q And so what did you do after this -- after this SEC  
3 interview and your discussion with the defendant?

4 A You know, I said, you know, you got to keep me up to date  
5 and the one thing you got to make sure is totally transparent  
6 so I'm not blindsided by anything in the future. I am on the  
7 board and it's critical you keep me fully informed.

8 Q Did you actually notify the other board members about the  
9 interview?

10 A I did a little bit later. I had spoken to Evan to double  
11 check that this still didn't impact Retrophin, so I wanted to  
12 be careful not to get ahead of ourselves, it was still MSMB  
13 specific. And as information, I had just let the board  
14 members know I think sometime a few week later when I saw  
15 them. I just said be aware of this, that it doesn't touch  
16 Retrophin.

17 Q And then directing your attention to May of 2014, was  
18 there a board of directors meeting that month?

19 A Yes, there was.

20 Q And where was it located?

21 A It was located at the Manhattan offices. The outside law  
22 firm, because it was -- the board meeting was next to -- was  
23 happening next to the annual general meeting, which would  
24 involve potentially more people.

25 Q And what's this general annual meeting?



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1 A Again, it's a legal reporting and processing requirement  
2 of any publicly-traded company, where any shareholder is free  
3 to come along to meet the management of the company. The  
4 auditors, the external auditors are there, and it's a chance,  
5 very transparently, for the shareholders to engage with the  
6 management of the company, and that needs to happen publicly  
7 and in a public forum once a year.

8 Q And that's why it was conducted at Katten's offices?

9 A Yes, because we weren't sure how many people might come.  
10 It could be 20, 30, 40 people, and they have the space to  
11 handle that type of meeting.

12 Q And was there also a board of directors meeting that  
13 occurred at that time?

14 A Yes. That followed the AGN.

15 Q What do you recall about that meeting, the board of  
16 directors meeting?

17 A We started it with an executive session and we -- because  
18 we were moving from the one room to the other meeting, because  
19 at this point in time we were just about to appoint Steve  
20 Aselage as president of the company, and the independent  
21 directors wanted to talk directly with Steve about what that  
22 would look like and what some of these areas of focus would  
23 look like.

24 So when we held the meeting, Evan Greebel had come  
25 up and come in with us, he wanted to join the meeting and I

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1 said to him, No, this is probably going to be the independent  
2 directors with Steve Aselage and we want to exclude you and  
3 Martin at this point.

4 Q And what did you observe was there reaction to that?

5 A Well, the point was only Evan by himself because Martin  
6 was still walking over from the other meeting. He said, look,  
7 it's normal for the company executives to sit in, even in  
8 executive sessions. I said it's normal, it doesn't have to  
9 happen, and at this meeting we don't want you to be here.

10 Q Why didn't you want Mr. Greebel to be there?

11 A Again, certainly after the SEC discussion, I was -- I was  
12 losing some confidence in Evan's independence.

13 Q Independence, what do you mean by that?

14 A Independence of was he really -- was he taking his role  
15 as acting company secretary seriously and really talking with  
16 the board and letting us know anything we should be aware of,  
17 or raising any issues that he feels should be raised.

18 So part of what I had already done with Martin is to  
19 say we must accelerate getting our own general counsel on  
20 board so that we, you know, the board has access to them, so  
21 our own general counsel.

22 So that was part of the reason, again, I wanted to  
23 have a more private -- we wanted to have a more private  
24 discussion with Steve Aselage as he was taking -- as he was  
25 assuming his new role.

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1 Q And what did you observe with respect to Martin Shkreli's  
2 reaction to not being part of the executive session?

3 A Because he was walking behind us, because he was talking  
4 to other people from the annual general meeting, he started to  
5 walk in, and I think I was the one who said to him, hey,  
6 Martin, we don't want you yet, we're going to have this  
7 independent to start with, we'll let you know when we're  
8 ready.

9 Q And what was his response?

10 A At that point he did stay out there. But about, you  
11 know, ten minutes into our discussions, he did sort of bang on  
12 the door and said, you know, is it about time I can come in  
13 now? And we said, No, not quite yet.

14 Q And why did you exclude Mr. Shkreli from that meeting?

15 A Again, we wanted to really have a chat, a discussion with  
16 Steve Aselage.

17 Q And why didn't do that with Mr. Shkreli present?

18 A Again, because we were getting role clarity. We wanted  
19 to get the role clarity that we felt we needed between Steve  
20 coming on board as president and chief operations officer and  
21 Martin.

22 Q And you were saying that you were bringing Mr. Aselage on  
23 as president of the company at that point?

24 A Yes.

25 Q And was he solely in the president role?

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1 A Yes.

2 Q Okay. And what was his responsibilities as the  
3 president?

4 A He was going to take the commercial side, you know,  
5 really bring together and building out the sales force that we  
6 would be building the infrastructure for selling the drugs  
7 that we would to bring is to market, and also some of the  
8 interfaces with the research and development department.  
9 That's where he focused.

10 Q Okay. And then during the -- after that meeting, during  
11 the summer of 2014, what was happening at Retrophin?

12 A It was an incredibly busy time, we were just acquiring  
13 another drug, and Martin had been bringing forward, you know,  
14 almost like an endless stream of new business development  
15 opportunities, potential acquisitions.

16 And as a board, we were getting concerned about the  
17 volume of new deals he was potentially bringing forward,  
18 because we already had the success of the ones from January,  
19 we had another one in May, and we felt the organization needed  
20 to consolidate so it can cope with these new drugs and build  
21 them into our offering model.

22 And also coming into that summer window, you know,  
23 there was a strained relationship between Martin and the CEO  
24 Marc Panoff, which was becoming quite public to the board.  
25 You know, Martin's raising issues with us, and Martin is

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1 raising issues and concerns about with Marc with us.

2 So it was an incredibly busy time but there were  
3 starting to be some cracks, if you like, starting to emerge.

4 Q And I'm going to direct your attention to an exhibit  
5 marked for identification as Government Exhibit 122-84. It's  
6 Tab 66 of this binder.

7 Do you recognize this document?

8 A Yes.

9 Q And what is it?

10 A It is an email from myself to Martin copying Steve  
11 Aselage.

12 Q And what is the date on this email?

13 A It's dated June 25th, 2014.

14 MS. KASULIS: The government moves this exhibit into  
15 evidence.

16 MR. AGNIFILIO: No objection.

17 THE COURT: We receive Government Exhibit 122-84.

18 (Government Exhibit 122-84, was received in  
19 evidence.)

20 Q So this is an email from you dated June 25th, 2014 to  
21 Mr. Shkreli with a carbon copy to Steve Aselage; is that  
22 right?

23 A That's right.

24 Q And it's entitled "Board Input Company Confidential" with  
25 an attachment?

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1 A Yes.

2 Q Can you please read that first paragraph of your email?

3 A Excuse me. Martin, as we discussed, I was able to speak

4 with each of our board colleagues before I got on the plane.

5 They all share the same frustration you have, that much of the

6 hard work and breakthroughs of recent months are getting

7 buried under a series of items that are both surprises and

8 distractions. As a board we want to make sure we support and

9 guide you in a manner where you can focus on the things you do

10 so well, growing Retrophin and driving for breakthrough

11 patient solutions. If we work together with the right rigor

12 and planning, we know we can keep Retrophin on the growth

13 trajectory we all want to see.

14 Q And then the next paragraph?

15 A The collective input of the board is to set out on the

16 attached page, you and I have already discussed most of these

17 items, in keeping with our oversight -- excuse me, the

18 collective input of the board is set out on the attached page,

19 you and I have already discussed most of these items, in

20 keeping with our oversight and government's responsibilities,

21 we want to see each of the attached items put in place as soon

22 as possible.

23 Q Okay, so let's go ahead and look at the attachment that

24 you refer to there.

25 Who put together this attachment?

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1 A I put this together -- this attachment together after  
2 discussion with the other board members.

3 Q And what is the title of this attachment?

4 A "Retrophin Growth and Control Initiatives Company  
5 Confidential June 2014."

6 Q What prompted you putting this together this -- this memo  
7 and sending it to Mr. Shkreli?

8 A Two or three things, as I mentioned, were happening  
9 particularly in June that concerned us as a board.

10 First of all, you know, the fact that, you know, as  
11 I said, the fact that his relationship with Marc Panoff was  
12 obviously strained and the concern that we weren't moving  
13 ahead at that point to find our own internal general counsel,  
14 and that we weren't building out some of the other roles that  
15 we needed to recruit. And also we were starting to get  
16 feedback that there was some control exposures and that he  
17 wasn't following through on some of his commitments on the  
18 business development trading side as well.

19 Q And does this document reflect the different parameters  
20 that you had set out to Mr. Shkreli regarding your concerns?

21 A Yes. These are the things we wanted addressed as a  
22 board, and we wanted him to realize how serious we thought  
23 about this, because it was critical in the way the company was  
24 run.

25 Q Under this stakeholder insight section, we talked about

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1 an investor perception survey and employee survey.

2 What was your purpose in asking for those two  
3 surveys?

4 A The other -- the other directors and myself had had a  
5 discussion at this point through the month of June, but we  
6 really needed to now accelerate the timeline of -- of Martin  
7 moving out of the CEO role in a progressive manner.

8 Q When you say accelerate the timeline for him moving out  
9 of the role, what do you mean by that?

10 A Well, we had been discussing it for quite a while, all  
11 the way back to when we were coming to be NASDAQ listed, he  
12 was interviewing a potential president who would potentially  
13 become CEO, and the context of this, again, is, you know, we  
14 saw Martin, again, as we discussed before, he's excellent at  
15 the setup stages, but he didn't have the experience and the  
16 leadership to really run, you know, a complex multi-product  
17 business. And, again, we were -- this wasn't about taking him  
18 out of the company in any form, it was -- this was to prepare  
19 ourselves to say, we want to have the facts at our fingertips  
20 to have a discussion with him later in the year so say let's  
21 have an orderly move towards you assuming a different role,  
22 you, Martin, assuming a different role, and then having a new  
23 CEO appointed, who had experience running a multi-product line  
24 complex business.

25 Q And what was your position at Retrophin at this point in



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1 time?

2 A As part of the discussions with the other directors, they  
3 had asked me to become chairman of the board. We didn't have  
4 a chairman up to this point, because they wanted me to help  
5 steer these discussions Martin and to lay it out. So they had  
6 nominated and voted me in as chairman of the board during the  
7 month of June of 2014.

8 Q And in this email, you reference, before you get on the  
9 plane.

10 What are you referring to there?

11 A I'm getting off for my family vacation in Europe to meet  
12 my family and friends.

13 Q And was that something that you do regularly annually?

14 A Yes, it's annual. I meet my family usually in Greece.

15 Q So after this point in time, what is the next thing that  
16 happened with respect to Mr. Shkreli's employment as CEO of  
17 Retrophin?

18 A Well, specific to, you know, this document we just looked  
19 at, you know, I copied Steve Aselage on it because Martin was  
20 going to be with Steve Aselage in San Diego following this  
21 communication and I knew I'd be in Greece, so prompting the  
22 two of them to discuss this, because I discussed most of it  
23 with Martin before he left. So to make sure that there was a  
24 follow through suggestion. So that was the specific next step  
25 that happened in June.

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1 Q Who was on the board of directors at this point in time?

2 A At this point in time, it was still myself, Martin, Steve  
3 Aselage, Neal Golding, and Jeff Paley.

4 Q And with respect to Jeff Paley, what happened, if  
5 anything, regarding his position on the board of directors?

6 A He ended up resigning in early September. In early  
7 September of 2014, he had shared with me that he was concerned  
8 about Martin not following the direction of the board, and  
9 ignoring some of our instructions, and also the fact that  
10 Martin was being forward very significant potential  
11 acquisitions, one of them over \$500 million. And he didn't  
12 feel as a company we were ready yet to -- to handle an  
13 acquisition of that size, so he decided to resign in early  
14 September.

15 Q And so with his resignation, how many board members did  
16 have at that point?

17 A That left us with four.

18 Q And with respect to NASDAQ listing requirements, did that  
19 impact the listing requirements?

20 A Yes, it did. Because of the four, two were executive  
21 roles, both Martin and Steve Aselage, the CEO and president  
22 were executives, which only left myself and Neal Golding as  
23 independent. NASDAQ listing requirements are that you have a  
24 majority of independent directors.

25 Q So now directing your attention to September of 2014.

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1 A Yes.

2 Q In early September what, if any, discussions did you have  
3 with Mr. Shkreli regarding his position at Retrophin?

4 A I arranged to have a meeting with him and a dinner with  
5 him to talk about how these discussions had moved towards  
6 through the summer and also raised with him very specifically  
7 that I was telling him sort of this one-on-one meeting that he  
8 was losing support of the board.

9 Q And why is that?

10 A Again, he -- he was not heeding the direction of the  
11 advice that we set out all the way back in June and -- and  
12 also, we had just learned, about a two weeks or maybe a week  
13 before I was meeting with him, but not only had he ignored our  
14 instructions on the trading of the business development group,  
15 he had actually put in place a commission structure to pay  
16 them money as compensation, you know, these are Retrophin  
17 employees to actually do trading.

18 Q And did you raise that with the defendant at that dinner?

19 A I raised it as part of the discussion and asked him  
20 directly had he put a commission structure in place with the  
21 business development group and he said no.

22 Q And what was your reaction to that?

23 A I was stunned. Absolutely stunned.

24 Q And why is that?

25 A You know, as a board member and chairman at the time,

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1 he's lying to my face.

2 MR. AGNIFILIO: Objection.

3 THE COURT: I will overrule the objection, it's a  
4 perception of the witness.

5 Q And after -- was there anything else that Mr. Shkreli  
6 said to you during that dinner?

7 A No, the other thing is he basically said, you know, it's  
8 a weak board, I can get rid of you whenever I need to.

9 Q So what did you do after this dinner with the defendant?

10 A Well, clearly that -- you know, again, up until that  
11 point while I still knew he would go ahead in the following  
12 weeks with the board meeting and talk about him coming out of  
13 the CEO role, we were going to do it more as a discussion with  
14 him. Because we certainly wanted him to stay in the company  
15 and felt that was important.

16 A very important criteria to me here as a board  
17 member is how the street -- how the market reacts. You know,  
18 if they hear bad news or something traumatic about the CEO,  
19 that can hurt the company dramatically. So I knew we had to  
20 handle this in a very appropriate manner, very appropriate  
21 manner to protect the board -- to protect the company -- the  
22 company. So I had a followup conversation with -- at that  
23 time the only other directors, other than Martin, was Steve  
24 Aselage and Neal Golding after I had this meeting with Martin.  
25 I think two or three days later I had a call with him where I

RICHARDSON - DIRECT - KASULIS

1 shared with him. And I said -- I previously set out the  
2 criteria that I only would be willing to proceed to remove  
3 Martin from the CEO role under three -- you know, if we had an  
4 interim CEO ready to announce; if we had -- we were able to  
5 talk -- make sure that he, Martin, remained on the board of  
6 directors in an advisory role, and that we had a very, very  
7 good communication plan to handle the news and handle the  
8 transition.

9 And it was on this call that following week, I think  
10 it was around the 23rd of September, with Steve Aselage and  
11 Neal Golding that it was the first time that Steve Aselage  
12 agreed that he would be willing to be interim CEO. And on  
13 that call with him, we agreed now that we would proceed the  
14 following week after we got our communication plan ready and  
15 we would prove to remove Martin as CEO, ask him to stay on the  
16 board of directors and play a strategic advisory role.

17 Q And what happened after that call?

18 A After that call, you know, Steve Aselage and I focused on  
19 the communication plan, or punch list as we called it. We had  
20 to make sure that we had a very good communication plan  
21 together to make sure, again, we protected the company, and,  
22 again, you know, we were preparing on how we would communicate  
23 this with Martin. Because, again, while we knew he couldn't  
24 stay in an executive role, because of the fact he lied to me,  
25 he could no longer stay in an executive role, even at that

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1 point wanted him to stay as a board of director because of his  
2 ideas and everything else were very valuable to the company.

3 So we prepared to meet with him, and Steve Aselage  
4 and I set up the meeting with him for, I think, 5:00 on the  
5 Monday the 29th of September.

6 Q And did you, in fact, have that meeting?

7 A We had that meeting with Martin, yes.

8 Q And who -- who was part of that meeting?

9 A It was just myself, and Martin, and Steve Aselage and at  
10 Martin's office.

11 Q And what happened during that meeting?

12 A As chairman, I took the lead in the discussion and,  
13 again, because I wanted to make sure that we kept Martin  
14 playing a role with the company I -- I framed it in two ways.

15 One, is to talk about the fact that we had many  
16 times talked about once the company got to certain size and  
17 complexity, we needed a different type of CEO. And we talked  
18 about that previously and said that was one of the framing of  
19 that, however, we now as a board had decided that he had to --  
20 we wanted him -- to remove him from the CEO role because of --  
21 of three specific incidents and government breaches, which  
22 meant he could longer stay in an executive role.

23 (Continued following page.)  
24  
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RICHARDSON - DIRECT - KASULIS

1 Q Do you recall those Government issues?

2 A Yes. One was, as I've explained before, which is that he  
3 had blatantly ignored the direction of the Board around the  
4 trading of the Business Development Group. And in fact, had  
5 lied to me when I had spoken to him about it.

6 Secondly, because we had found out a little earlier  
7 that he had done trading in company stock when it wasn't  
8 allowable; at certain times officers aren't allowed to trade,  
9 and he did trading in one of these windows.

10 MR. AGNIFILO: Object, object, Judge. Can we  
11 approach?

12 THE COURT: Sidebar?

13 MR. AGNIFILO: Yes.

14 (Continued on the next page.)

15 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 MR. AGNIFILO: I'm hearing this for the first time,  
2 and he's not charged with this, that he traded when stock was  
3 restricted.

4 THE COURT: He's not charged with it, but he's  
5 explaining the reasons for removing him.

6 MR. AGNIFILO: That's a new crime that they didn't  
7 put in for 404(b).

8 MS. SMITH: He traded during the lock-up period and  
9 there is a short swing lawsuit. These were all the reasons he  
10 was given in that meeting for why he was being removed as CEO.

11 MR. AGNIFILO: Before you told that to the jury, you  
12 should have made a 404(b).

13 MS. SMITH: We're not alleging the separate crime.

14 MR. AGNIFILO: 404(b) is not a separate crime.

15 MS. SMITH: Tweeting inside information, this led up  
16 to why he was removed.

17 THE COURT: Let's give the instruction to the jury  
18 that he's not charged with trading company stock. What else  
19 do you want to list so we'll make it clear.

20 MR. AGNIFILO: But --

21 THE COURT: This explains the reasons for --

22 MR. AGNIFILO: -- it could be he was convicted of  
23 manslaughter, they can't say it's the reason he was fired.  
24 It's duly prejudicial. It's hardly on 404(b). They want to  
25 bring in another crime as background to the offense as



## SIDEBAR CONFERENCE

1 background to the witness's testimony or trial evidence,  
2 that's why we have 404(b) evidence.

3 I had no idea this was coming.

4 MS. SMITH: Your Honor, I think it's clearly not  
5 404(b), it's direct evidence. I'm surprised Mr. Agnifilo was  
6 not aware of the lock-up issue. They were aware of the short  
7 swing, there was a lawsuit. This was discussed.

8 MR. AGNIFILO: I'm aware of what you give me notice  
9 of. You didn't give us notice of this, you just didn't.

10 MS. SMITH: There was tweeting of the inside  
11 information. There was the short swing lawsuit. There was  
12 the berating of employees. There was the use of private  
13 investigators. There was a whole series of things that led up  
14 to the firing, all of which were perfectly fair. I don't  
15 think that we saw the trading during the lock-up as any  
16 different than anything else. He hasn't been charged with  
17 that civilly.

18 MR. AGNIFILO: He said it was illegal.

19 THE COURT: He said -- I don't believe he used the  
20 word illegal. He had traded in company stock.

21 MR. AGNIFILO: He had an adjective.

22 THE COURT: We can go back and look.

23 MS. KASULIS: I can -- we can move on from this  
24 discussion. But again, if the cross-examination is going to  
25 be that this Board removed him unfairly, I think that is a

## SIDEBAR CONFERENCE

1 fair rebuttal evidence.

2 MR. AGNIFILO: But this isn't rebuttal.

3 MS. KASULIS: But if that's where you go, then I  
4 think, again, that opens the door to eliciting that kind of  
5 information. Because again, if that's going to be your  
6 cross-examination that he was being unfairly removed by the  
7 Board, we should be able to put in their reasons, principled  
8 reasons, for removing him as CEO of the company. We believe  
9 this is squarely within purview of evidence that we should be  
10 allowed to admit.

11 I can move on from this conversation.

12 MR. AGNIFILO: Are you saying that he tweeted inside  
13 information?

14 MS. KASULIS: They basically said he was tweeting  
15 information about the finances of the company that could be  
16 construed that -- they warned him about that, do not do that.

17 MR. AGNIFILO: They warned him about tweeting.

18 THE COURT: They mentioned, he did mention that it  
19 was about information that wasn't public, that's why they  
20 asked the Board to approve any outside media.

21 MS. KASULIS: Or Twitter.

22 MR. AGNIFILO: I was worried, inside information is  
23 a very specific definition.

24 MS. SMITH: I was using that here. I don't think  
25 that's how either of the witnesses will describe it. We won't

SIDEBAR CONFERENCE

1 use that term.

2 THE COURT: Non-public information.

3 MR. AGNIFILO: We need a limited instruction.

4 THE COURT: Let's talk about that. Mr. Shkreli has  
5 not been charged with --

6 MS. KASULIS: Yes.

7 THE COURT: -- what would you like me to address?

8 MR. AGNIFILO: Anything related to the trading that  
9 was just described by the witness.

10 THE COURT: Okay. What else?

11 MR. AGNIFILO: Are you guys, you haven't really --  
12 the tweeting issue.

13 MS. KASULIS: That's all I was planning on eliciting  
14 on tweeting.

15 MR. AGNIFILO: I don't know that that's clear, that  
16 he was tweeting anything that could be construed as inside --  
17 I'm not sure about the tweeting.

18 THE COURT: The way he described it, it was just a  
19 general board concerned about unauthorized disclosures about  
20 company business either through tweeting or they wanted to  
21 suppress releases or disclosures.

22 MR. AGNIFILO: Let's leave the tweeting alone.

23 THE COURT: Has not been charged with any offenses  
24 relating to trading Retrophin stock; is that fair?

25 MR. AGNIFILO: That's fine.

## SIDEBAR CONFERENCE

1 MS. SMITH: And the other witness will talk about  
2 it. We can do it at that level as well with the tweeting.

3 MS. KASULIS: That's Mr. Aselage.

4 THE COURT: This was reason number two. What is the  
5 third so we don't have anymore sidebar?

6 MS. SMITH: Short swinging stock trading that led  
7 to, there was a lawsuit.

8 MS. KASULIS: Shareholder lawsuit.

9 THE COURT: He said three reasons why he was  
10 relieved. One was that he ignored the Board's directive  
11 regarding business development. He traded in company stock,  
12 lied to --

13 MS. KASULIS: He had issued more stock options than  
14 should have to the Board. That's just an internal company  
15 issue.

16 THE COURT: We'll give the instruction and then you  
17 can elicit whatever the second or third items are.

18 All right. So before she elicits the third I'll  
19 give the instruction.

20 MR. AGNIFILO: Yes.

21 (End of sidebar conference.)

22 (Continued on the next page.)

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RICHARDSON - DIRECT - KASULIS

1 (In open court.)

2 THE COURT: Members of the jury, you are instructed  
3 that Mr. Shkreli is not being charged with any offenses  
4 relating to trading Retrophin stock.

5 BY MS. KASULIS:

6 Q So Mr. Richardson, you mentioned three separate things  
7 that you had discussed. We discussed the first two, what is  
8 the third one?

9 A He had been issuing quite a number of stock grants,  
10 incentive grants, to new employees but hadn't been keeping  
11 track of what the available approved pool was, and  
12 unfortunately he had exceeded the available pool.

13 Q So what was the defendant's reaction during this meeting?

14 A He did listen throughout the discussion, at the end of  
15 the discussion because I had said to him, now it's best that  
16 you go home and we can talk to you tonight or tomorrow about  
17 the appropriate communication around this. And that at that  
18 point he said, "I'll beat be guys to build a new company.  
19 I'll get to a billion dollars before you can."

20 Q What happened after this meeting?

21 A After this meeting immediately Mr. Aselage and I met with  
22 our internal CFO and head of investor relations to start to  
23 action our communication plan and start to draft the press  
24 release, which we were planning to share with Martin to agree  
25 to issue the next day.

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1           That evening, unfortunately, it appears that Martin  
2           had chosen to speak to some of the investors in the company.  
3           And Mr. Aselage started to, and I started to, receive e-mails  
4           from investors expressing their concern and alarm and wanting  
5           to understand more about these circumstances.

6           Q     So who are the individuals that you met with after the  
7           meeting with Mr. Shkreli?

8           A     We met with Tom Fernandez, Marc Panoff the CFO, and for  
9           part of that meeting I believe Chris Klein, who was our new  
10          investor relations employee manager, he joined as well because  
11          we needed him to set up calls with each of our investors.

12          Q     Did that in fact happen? Were there in fact calls that  
13          were set up with investors?

14          A     Yes, yes. Over the next two days Steve Aselage and I  
15          handled a series of calls, some of which I joined, some of  
16          which Steve Aselage handled separately.

17          Q     With the investors of Retrophin?

18          A     With the individual investors.

19          Q     And was there a Board meeting that happened around this  
20          time period?

21          A     Yes. We had already planned the Board meeting. We had  
22          to delay the original agenda so we could handle these  
23          discussions before we got back to the agenda itself, normal  
24          agenda.

25          Q     What happened during that Board meeting?

RICHARDSON - DIRECT - KASULIS

1 A During the Board meeting, of course we had to formally  
2 talk about removing Martin from the CEO role, formally  
3 appointing Steve Aselage as the interim CEO.

4 Q The Government is showing you what is marked for  
5 identification as exhibit 122-44, tab 67 of your binder.

6 A Yes.

7 Q Do you recognize this exhibit?

8 A Yes, it's the minutes of the Board of Directors meeting.

9 Q What is the date on these minutes?

10 A September 30, 2014.

11 MS. KASULIS: The Government moves this exhibit into  
12 evidence.

13 MR. AGNIFILO: No objection.

14 THE COURT: We receive Government 122-44.

15 (Government Exhibit 122-44, was received in  
16 evidence.)

17 Q So is this document the minutes of the Board of Directors  
18 meeting that occurred on September 30, 2014, that you were  
19 just referencing?

20 A Yes.

21 Q What is your understanding as to who actually prepared  
22 these minutes?

23 A These were prepared by our new in-house general counsel,  
24 Margaret Valeur-Jensen.

25 Q Do you have an opportunity to review these minutes before

RICHARDSON - DIRECT - KASULIS

1 they were approved?

2 A She brought them to the Board for approval.

3 Q Your understanding is these were in fact approved by the  
4 Board?

5 A They were approved by the Board, yes.

6 Q So directing your attention to, after the first paragraph  
7 there is a sentence that reads, "Mr. Richardson acted as  
8 Chairman of the meeting. Ms. Valeur-Jensen acted as  
9 Secretary." Again, who is Ms. Valeur-Jensen?

10 A Our new in-house general counsel, which also carries the  
11 company's Secretary title as well.

12 Q The next paragraph, if you can look at that paragraph,  
13 can you read that paragraph, please?

14 A "Mr. Richardson reported that he and Mr. Aselage had met  
15 with Mr. Shkreli to discuss the issues with respect to  
16 Mr. Shkreli's performance as Chief Executive Officer of the  
17 company. Mr. Richardson reported that Mr. Shkreli had been  
18 asked to transition from Chief Executive Officer to a senior  
19 strategic advisory position with the company, and that  
20 Mr. Shkreli had declined. Mr. Richardson summarized issues  
21 with Mr. Shkreli trading in common stock of the company and  
22 the results of litigation. He also outlined the need for  
23 stricter governance and controls. The Directors discussed  
24 Mr. Shkreli's performance and the terms of his employment  
25 agreement with the company. And following discussion,



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1 determined that it was in the best interest of the company  
2 that Mr. Shkreli no longer serve as Chief Executive Officer of  
3 the company."

4 Q If you look right below that, if we scroll down, it says  
5 "Upon motion made and duly seconded, it was unanimously  
6 resolved that the removal of Mr. Shkreli from all of his  
7 duties and authority as Chief Executive Officer of the company  
8 is hereby approved." Do you see that?

9 A Yes.

10 Q And that Mr. Shkreli was then put on paid administrative  
11 leave for the remainder of the term of his employment  
12 agreement?

13 A That's right.

14 Q Below that, "It was resolved further that Mr. Aselage was  
15 to be the Interim Chief Executive Officer of Retrophin;" is  
16 that right?

17 A Yes.

18 Q You had mentioned that investors had started calling and  
19 that he had a series of communications with them, what were  
20 the investors' response to the news of Mr. Shkreli's removal  
21 as CEO?

22 A We took them through what we could appropriately share,  
23 knowing that they were trading in company stock. As we're  
24 speaking to them we had to have their reassurance they weren't  
25 trading until this was publicly disclosed information. And in

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1 the discussion with them, we took them through why we had made  
2 this decision and why we had taken this action and that we  
3 indeed had hoped and still wanted Martin to remain on the  
4 Board.

5 And they were quite surprised, because they said  
6 what we were sharing with them was quite different than the  
7 story that Martin had shared with them the night before.

8 Q What ultimately was the investors' response by the  
9 decision by the Board?

10 A They wanted reassurance about the direction the company  
11 was taking. And ultimately, I'm proud to say, we didn't lose  
12 one investor that I'm aware of, each of them continued to  
13 invest in the company.

14 Q What was Martin's reaction to the Board's removal of him  
15 as CEO of Retrophin?

16 A By the 30th he had reacted, the way explained earlier, by  
17 the next day he had started to take the more aggressive stance  
18 saying, "you can't terminate me," and he became a lot more  
19 volatile and said, "I'm not resigning."

20 Q I'm showing you what's been marked for identification as  
21 Government's Exhibit 122-92, it's tab 68 of the binder. Do  
22 you recognize this exhibit?

23 A Yes.

24 Q What is it?

25 A An e-mail from Martin.

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1 Q What is the date on it?

2 A This is October 1st.

3 Q Of what year?

4 A 2014.

5 MS. KASULIS: Government moves this exhibit into  
6 evidence.

7 MR. AGNIFILO: No objection.

8 THE COURT: We will receive 122-92 in evidence.

9 (Government Exhibit 122-92, was received in  
10 evidence.)

11 Q This appears to be from Mr. Shkreli to yourself and  
12 Steven@Retrophin.com is that Steve Aselage?

13 A Yes, that's his new business e-mail address.

14 Q Dated October 1st, 2014, with the subject "BOD thoughts."

15 Mr. Shkreli writes, "Let me know what you want to do  
16 regarding BOD," is that Board of Directors?

17 A Yes.

18 Q "Happy to stay on until you find a fifth to regain NASDAQ  
19 compliance. Long term there are technical reasons I would not  
20 like to be on the Board, Form 4 requirement, inability to  
21 borrow against stock. Also interested in resigning now if  
22 that is something you're interested in. MS."

23 What was your understanding of Mr. Shkreli's posture  
24 at this point in time regarding his removal as CEO of  
25 Retrophin?

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1 A Again, he was sending us mixed messages during this week.  
2 And part of it was, I think, he was waiting to see the  
3 investor reaction because he had spoken to many of them. I  
4 think he had shared with us that he expected many of the  
5 investors not to stick with the company. And so he was moving  
6 his stance with us during this week.

7 Q After this e-mail -- and you're saying he was moving his  
8 stance, what, if anything, did the defendant do next?

9 A Later this week, unfortunately, despite agreements with  
10 us, or we thought agreements with us, he went into the  
11 Retrophin offices and started to actually go through servers  
12 and files and started to take files out of the offices.

13 Q And what happened after that?

14 A At this point, again what we agreed in our action plan  
15 between Mr. Aselage and myself and Neal Golding, is that Steve  
16 Aselage would take the lead in now discussing with Martin and  
17 managing this transition with Martin.

18 So Steve Aselage and Martin were in discussions  
19 through the back end of this week. But we made it clear that  
20 he was not allowed to come into the offices, was not allowed  
21 to take files out. And that at this point we actually worked  
22 with our technology people to remove his access to the  
23 servers.

24 Q Was there a subsequent Board of Directors meeting from  
25 the September 30, 2014, meeting we've discussed? A meeting

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1 which Mr. Shkreli participated after the Board of Directors  
2 meeting in September 30, 2014?

3 A Excuse me, yes, yes. Through the various discussions and  
4 through the rocky period here, Steve Aselage and Martin  
5 Shkreli were able to put together an agreement, I think by  
6 October 13, at which point Martin was being forward part of  
7 the agreement, his resignation from the company and the Board.  
8 As part of that, we agreed as a company, that we would sell  
9 him for his new company that he was setting up for at this  
10 point, he was telling, two drugs that weren't of core  
11 importance to our company. We were going to sell two drugs to  
12 him, which is one of the drugs he wanted to kickstart his new  
13 company.

14 Q What happened with respect to Mr. Greebel's involvement  
15 with Retrophin in the September 2014 time period?

16 A At this point we were of pulling back from him totally.  
17 We had already been pulling back from involvement with Katten  
18 and him ever since we had Valeur-Jensen on Board and she was  
19 bringing in external advisers.

20 Q Are you still on Retrophin's Board of Directors?

21 A No, I'm not.

22 Q Why not?

23 A I made the decision. The decision was made I think March  
24 of 2015. I decided not to remain on the Board when I came up  
25 for reelection at that year's annual general meeting.

RICHARDSON - DIRECT - KASULIS

1 Q Did you ultimately leave the Board of Directors?

2 A I left the Board of Directors effective March 2015.

3 Q Prior to your departure from the Board of Directors do  
4 you have an understanding as to whether an internal  
5 investigation was initiated by Retrophin?

6 MR. AGNIFILO: I object. He is no longer on the  
7 Board.

8 MS. KASULIS: This is prior to when he left.

9 MR. AGNIFILO: I object anything about this.

10 THE COURT: What is the ground, one word.

11 MR. AGNIFILO: I think it's hearsay and irrelevant.

12 THE COURT: Does the Government want to make a  
13 proffer on relevancy?

14 MS. KASULIS: Your Honor, just the purpose was to  
15 say he was separate and apart from that.

16 THE COURT: All right. I'll overrule the objection  
17 then.

18 BY MS. KASULIS:

19 Q Did you have any involve in any sort of internal  
20 investigation undertaken by Retrophin?

21 A No. Through the October/November window, we had  
22 appointed, as I mentioned, a new external general counsel. We  
23 had asked them to start to do an investigation so we could  
24 find out if indeed there were any other problems that we  
25 weren't aware of. As part of that investigation we had

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1 appointed an oversight committee from the Board, which were  
2 the two new directors we appointed. And to make sure that  
3 indeed any director, like myself, who was involved through the  
4 time while Martin was CEO, wasn't any part of the  
5 investigation's oversight.

6 Q Were you compensated for serving on Retrophin's Board of  
7 Directors?

8 A Yes, I was, from the end of 2013 through to when I left  
9 the Board in March 2015.

10 Q What was your compensation as a Board member of  
11 Retrophin?

12 A In total for those two periods, again, much of this is in  
13 stock that I still hold. So again, it's stock I hold, but the  
14 total value of the stock I hold and the cash retainer that I  
15 received was just over \$400,000.

16 Q Separate from your compensation as a Board of Directors  
17 member, what about your MSMB Capital investment that you had  
18 rolled over into Retrophin. Do you understand what the value  
19 is of that investment?

20 A It's all, again, in Retrophin stock that I still hold.  
21 So it's based on whatever the market right is, but I'd  
22 estimate if the price stayed the same the last couple days  
23 \$1.9 million.

24 Q Then separate and apart from that, you have your own  
25 Retrophin shares that you purchased independently of anything

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1 with respect to your MSMB Capital investment?

2 A Yes.

3 Q Or your compensation on the Board of Directors; is that  
4 right?

5 A Yes, yes.

6 Q You still hold those shares?

7 A I still hold those shares.

8 Q When was the last time you had contact with the  
9 defendant?

10 A The last time, he sent me an e-mail I believe when it was  
11 publicly announced that I wasn't going to be standing on the  
12 Board again, that would have been March 2015.

13 Q What do you recall from that e-mail?

14 A It was an e-mail sort of saying that he was pleased that  
15 I wasn't going to be staying on the Board and now can we  
16 rekindle our friendship.

17 Q What was your response to that?

18 A My response was, I'm still on the Board for the  
19 foreseeable future. And I would be willing to meet with him.  
20 I really wanted to understand at this point why he comprised  
21 our friendship and why he held so many things back from me as  
22 a Board member.

23 Q Did you have any further discussions with the defendant  
24 after that e-mail exchange?

25 A No.



RICHARDSON - DIRECT - KASULIS

1 MS. KASULIS: One moment, your Honor.

2 No further questions at this time.

3 THE COURT: Are you ready to cross-examine.

4 MR. AGNIFILO: Yes.

5 MS. KASULIS: Your Honor, we just got handed this  
6 binder from the defense. I haven't seen these documents  
7 before. Can we take a brief moment to review them?

8 THE COURT: Why don't we give the jurors lunch right  
9 now then.

10 Please return in an hour. We will start the trial  
11 again at 1:05. Thank you for your ongoing attention. Please  
12 don't talk about the case.

13 (Jury exits the courtroom.)

14 (Whereupon, a lunch recess was taken at 12:10 p.m.)

15 (Continued following page.)

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S. RICHARDSON - CROSS - AGNIFILO

1 (In open court: 1:08 p.m.)

2 (Jury enters the courtroom.)

3 THE COURT: All right. We have all our jurors back.

4 Mr. Agnifilo, if you'd like to cross examine

5 Mr. Richardson we'll bring him back to the witness stand.

6 (Witness takes the stand.)

7 THE COURT: Sir, you're still under oath.

8 THE WITNESS: Yes, Judge.

9 CROSS-EXAMINATION

10 BY MR. AGNIFILO:

11 Q Good afternoon, Mr. Richardson.

12 A Good afternoon.

13 Q My name is Marc Agnifilo. I'm one of Martin Shkreli's  
14 lawyers. I'm going to ask you some questions. If I ask you a  
15 question that's not clear to you, please ask me to rephrase  
16 it. I'm happy to do that.

17 A Okay.

18 Q Before we broke you gave three reasons, three primary  
19 reasons why the board of Retrophin removed Martin as the CEO.  
20 Do you remember that testimony?

21 A Yes.

22 Q And you said that he was giving essentially incentives to  
23 the business commission, the business group that was doing the  
24 trading, correct?

25 A The business development group, yes.

S. RICHARDSON - CROSS - AGNIFILO

1 Q And they were the ones doing trading?

2 A Yes.

3 Q You said he was trading in the company, correct?

4 Trading company stock?

5 A When the window was closed.

6 Q And you said that he was giving stock grants to new  
7 employees, correct?

8 A In excess of the approval.

9 Q Got it. None of the reasons related to unauthorized  
10 settlement agreements, correct? Yes or no?

11 A No.

12 Q None of the reasons related to unauthorized consulting  
13 agreements, yes or no?

14 A No.

15 Q None of the reasons related to him steeling from the  
16 company through such agreements, yes or no?

17 A No.

18 Q None of them related to him lying to Retrophin through  
19 reaching such agreements, correct?

20 A Correct.

21 Q Now, before we broke you said that you were paid for your  
22 duties as a board of directors member, correct?

23 A From late 2013, yes.

24 Q And you worked very hard in that capacity, fair to say?

25 A Yes.

S. RICHARDSON - CROSS - AGNIFILO

1 Q And you were paid \$400,000 by today's value of Retrophin  
2 stock?

3 A That's correct. Across that period.

4 Q And you also said that the exchange of your MSMB value to  
5 your Retrophin stock is what as of today's value?

6 A 1.9 million.

7 Q So between your pay on the board and your profit, we're  
8 talking about \$2.3 million, fair to say?

9 A Yes.

10 Q Now, you were with American Express how long?

11 A Thirty-six years.

12 Q American Express, one of the leading companies in the  
13 world by many metrics, correct?

14 A Yes.

15 Q Founded in 1850, correct?

16 A Yes.

17 Q I did my research.

18 A You did. The Wells Fargo.

19 Q Yes. And you were Senior Vice President of HR, correct?

20 A Yes. I wasn't the number one person in HR, but I was  
21 Senior Vice President of HR.

22 Q And how many people did you supervise, if I can ask?

23 A At that time about 400.

24 Q And so you had 400 people working under you in your  
25 capacity in the HR department of AMEX, right?

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1 A Yes. My responsibilities.

2 Q And how long a period of time did you have those  
3 responsibilities where you were supervising 400 people?

4 A Really through that 12-year period that I was in the  
5 human resources area.

6 Q And at one point you were something called the Chief  
7 Talent Officer?

8 A That was part. It was an adjunct title. They went  
9 together.

10 Q I see. And tell us about that. What are your duties and  
11 responsibilities in that capacity?

12 A It was -- I was responsible for all the international  
13 regions, so outside of the United States from the human  
14 resources point of view. I was responsible for the  
15 recruitment of our talent of our employees going forward. I  
16 was responsible for the development, planning of our existing  
17 employees. I was responsible for employee relations, you  
18 know, if there were any issues with employees. A whole mix of  
19 portfolio of account abilities.

20 Q So fair to say you had a very significant job at a very  
21 significant company?

22 A Yes.

23 Q And you left American Express after 36 years in 2008?

24 A That's correct.

25 Q And then you were with the Boston Consulting Group?

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1 A That was as a senior advisor, not as an employee. Yes.

2 Q Right. Right. And despite its name, the Boston  
3 Consulting Group has offices in 80 different locations around  
4 the world, correct?

5 A Yes.

6 Q And it's a large very successful management consulting  
7 firm, correct?

8 A Yes.

9 Q And in your capacity as senior advisor there, what were  
10 your duties and responsibilities?

11 A It was to join their consultant teams as an outside  
12 advisor and external voice, if you'd like, as they work with  
13 their clients largely around the gain of people and  
14 organizational issues that I described in my role.

15 Q And if there's such a thing, what was a typical client  
16 that you would handle with the Boston Consulting Group?

17 A They were large multinational organizations mostly.

18 Q What type of services would you provide?

19 A I joined them for meetings and meet with some of their  
20 leadership team. You know, again, perhaps their businesses  
21 were having problems with growth. Talk with their leaders  
22 about how they can improve their growth plans and what they  
23 could do to improve the performance of their employees.

24 Q And you also had your own consulting business, Diverse  
25 Outcomes is the name?

S. RICHARDSON - CROSS - AGNIFILO

1 A Yes.

2 Q Tell me about that business.

3 A And, again, those two pieces, Diverse Outcomes, I had  
4 just two or three direct clients that I had, again, in the  
5 same kind of areas. Working with clients about their  
6 organizational models, their people strategies, how they got  
7 the best performance they could out of their employees.

8 Q And you were also involved with the United Way Worldwide,  
9 correct?

10 A Yes, up until 2010.

11 Q Tell us what that is exactly.

12 A United Way, as you know, is one of the largest, globally  
13 one of the largest nonprofit organizations in terms of money  
14 that they are stimulating for local development, and I was  
15 involved with the international board which is, again, all the  
16 United Way affiliates around the world outside of the United  
17 States and helping steer them and how they collaborate  
18 together.

19 Q And what were your duties and responsibilities on the  
20 international board of the United Way?

21 A I started as a board -- on the board of directors, again,  
22 part of our role is a part from any personal contributions one  
23 is making as well, is to really work with their management and  
24 help them think through how can they accelerate their vision,  
25 their charter. How can they accelerate the impact of their

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1 programs.

2 Q Did you have traditional board responsibilities with the  
3 United Way?

4 A Yes, I ended up being chairman of the international board  
5 for a while.

6 Q And just -- I don't need too much detail. Generally  
7 speaking, what's the structure of the board that you were the  
8 chairman of?

9 A It's fairly normal. It would have the secretary and it  
10 would have, you know, the management team would be there. And  
11 it was probably eight to ten -- no, probably about 12  
12 external board members and we meet regularly.

13 Q And how regularly?

14 A Probably quarterly. I think we had face-to-face meetings  
15 quarterly.

16 Q Did you ever have meetings on the phone?

17 A As a full board I don't believe we did. As subsets of  
18 the board on specific subjects, I think we had meetings, we  
19 had calls.

20 Q So that the board would have certain sort of like  
21 subgroups within the overall board?

22 A Yes. That might be working on a particular project or a  
23 particular geography of support.

24 Q Fair to say that you're a sophisticated investor?

25 A Certainly capable, a capable investor, yeah.



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1 Q Do you remember telling the Securities and Exchange  
2 Commission you were a sophisticated investor?

3 A I think in response to the question I probably said yes,  
4 but -- or I may have said what I just said now which is  
5 capable may be the better word.

6 Q This will only take a second. Let me ask you, do you  
7 recall what you said to the SEC about the type of investor you  
8 are? Do you have any specific recollection?

9 A I don't about the particular adjectives used or  
10 descriptors used, I don't.

11 MR. AGNIFILO: Just give me one second.

12 Q Bear with me one second, Mr. Richardson. I apologize.

13 A Okay.

14 Q What I'm going to do, with your permission, it's 3500-SR  
15 1-1. Mr. Richardson, I'm just going to show you something and  
16 I'm just going to ask if it refreshes your recollection.  
17 That's the only question I'm going to ask you, and I'd ask you  
18 to look right under where it says investment experience and  
19 just read that to yourself, if you could.

20 A Yeah.

21 Q Do you recall if you told the SEC you were a  
22 sophisticated but conservative investor?

23 A Yes. And I think it's the word "conservative." I knew  
24 that I had put a qualifier in there to my earlier response to  
25 you.

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1 Q Very good. Very good.

2 Now, your investments are broken into real estate  
3 holdings and other holdings, correct?

4 A Yes.

5 Q And tell us about your real estate holdings, if you  
6 could.

7 A Yes, again, I've always tried to split my investments  
8 roughly half and half if I can or at least make sure I  
9 diversify them well. So I have a property here in New York,  
10 I have two properties in Mexico and I have a property in  
11 Greece.

12 Q Do you have a property in Australia?

13 A No.

14 Q And in Canada?

15 A No. My partner has a property there.

16 Q And your partner is Canadian?

17 A Yes.

18 Q And how long have you had the property in -- its in  
19 Mykonos in Greece, correct?

20 A Yes.

21 Q How long have you had that?

22 A About, about over 20 years. Must be about 25 years. I  
23 actually had it built.

24 Q During the time period that we've been talking about,  
25 this 2009 to 2014 time period, you would frequently go to

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1 Mykonos, correct?

2 A Yeah, I always spend summer there, always have summer  
3 there with my family for vacation.

4 Q And you would frequently go to Mexico as well?

5 A Yeah. Mexico is more recent. Mexico is the last few  
6 years.

7 Q Now, your non-real estate holdings are generally of what  
8 type?

9 A They're a classic retirement fund with conservative  
10 profile and a mix of the mutual funds and, you know, basically  
11 that's it. It's a fairly conservative portfolio.

12 Q And I think you said yesterday that you had never  
13 invested in a hedge fund before meeting Martin, is that fair  
14 to say?

15 A That's correct.

16 Q And you said that you were considering your investment  
17 options and you decided that there was a certain amount of  
18 money that you were willing to put in a riskier investment,  
19 correct?

20 A Yes, which I had spoken to my financial planner about  
21 that year, yes.

22 Q And so you decided you would take a portion of your  
23 overall investment and invest it in some hedge fund, correct?

24 A Yes.

25 Q And I think you told us yesterday what that -- you were

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1 willing to go up to 8 percent of your non-real estate  
2 holdings?

3 A Up to like 8-to-10 percent. 8-to-10 percent.

4 Q Okay. And so you met Martin at a cocktail party in the  
5 East Village, correct?

6 A Yes.

7 Q It was like on a roof?

8 A Yeah. The apartment had a roof level and the apartment  
9 level. So an indoor level and an outdoor level.

10 Q And the apartment was owned by Ken Banta and Tony Powe?

11 A Yes.

12 Q Now, did you speak with Ken Banta at all that evening?

13 A I think in passing, yes. It was Tony who I was more the  
14 friend with and Ken was his partner, so I had only met Ken  
15 very briefly before, but Tony I knew.

16 Q Did you know if Mr. Banta had invested with Martin  
17 previously?

18 A Not that night, no.

19 Q You came to learn that though?

20 A I came to learn that later.

21 Q And so give us an idea of how large is this cocktail  
22 party. This is like the fall of 2009, fair to say?

23 A Yes. Fall of 2009, late summer. Yes, fall.

24 Q Okay.

25 A Probably I would have thought 40-to-50 people probably

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1 churned through. Again, it was the nature of cocktail  
2 parties, people come and go and it was on two floors.

3 Q And you met Martin Shkreli for the first time at this  
4 time; is that correct?

5 A Yes.

6 Q And you said that you told him you thought he was cocky?

7 A Yes, because of the way he'd been interacting and the  
8 first time, literally the first time I saw him.

9 Q Tell me what you remember seeing.

10 A It was a group of colleagues standing together and  
11 chatting and talking with each other that I had just joined as  
12 I walked in there with my other friends, and, again, he was  
13 talking a little bit about his plans and what he was doing.  
14 And it was just a natural social interaction of people.

15 Q And how old was he at the time, do you know?

16 A I assumed, you know, probably late 20s. Mid-to-late 20s,  
17 I assume.

18 Q And was he there with other people his age, could you  
19 tell?

20 A It was a mix, mixed, a mixed group of people. Mixed  
21 ages. Mixed group of people.

22 Q So you and he got to talking, correct?

23 A Yes. A little bit there, but later on. We talked later  
24 on.

25 Q Later on on a different day?

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1 A No. No, later on that day, yes. Because, again, we were  
2 floating around talking with different people from the  
3 cocktail party.

4 Q And so when you and he got to talking, what did you talk  
5 about?

6 A We talked about, you know, as I say, we started and he  
7 was interested in my human resources background, and we talked  
8 about quite a few things. Started to talk about family and  
9 other dimensions. And, again, because I used that cocky line,  
10 I think he was, you know, he was intrigued about my  
11 directness. So it was a very lively, lively conversation,  
12 meeting someone for the first time.

13 Q And you recall it all these years later?

14 A Yeah. I don't recall the specifics of what we have  
15 covered, but I remember that we, you know, we created, you  
16 know, an understanding of who each of us was to some extent.

17 Q But you remember all these years later you met him in the  
18 East Village in an apartment that had a roof access, right?

19 A Yes.

20 Q And that you spoke to him and you told him he was cocky,  
21 right?

22 A Yes.

23 Q And the way you put it yesterday, I think he kind of  
24 followed you a little after you said that and engaged you in  
25 conversation again?

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1 A He just found me later. I don't want to give the  
2 impression he was following me. He just found me later  
3 because I had moved down inside -- into the apartment itself.

4 Q The second time that you guys spoke, how long do you  
5 think you spoke about?

6 A Probably 45 minutes maybe. Maybe up to an hour.

7 Q All right. And then the next thing that happened is you  
8 and he had dinner, correct?

9 A Yes.

10 Q And you said that Marek Biestek was there for some period  
11 of time, but he had car trouble, correct?

12 A Yes.

13 Q So he wasn't there the whole time?

14 A No.

15 Q You and Martin were there the whole time?

16 A Yes.

17 Q And do you remember where you went?

18 A Yes, I believe the first dinner was a restaurant in the  
19 Village.

20 Q What was the name?

21 A Cafe Loup.

22 Q Cafe Loup. Okay.

23 Do you recall that you and he went to Cafe Loup on  
24 September 28, 2009?

25 A I don't recall the dates, exact date, but that's

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1 certainly the right time period.

2 Q That's about right?

3 A That's about right.

4 Q And you and he had dinner a lot, right?

5 A From that point, yes. Once I was interested in the fund  
6 and we were starting to forge a friendship, yes.

7 Q You went to a place called Olives pretty frequently?

8 A I don't think we went there frequently.

9 Q How many times would you say?

10 A Olives I would think only a couple I would think.

11 Q You went to a place called Blue Water?

12 A Blue Water Grill, yes.

13 Q How many times would you say you were there?

14 A Probably -- we did brunch and dinner over the two or  
15 three years because it was one of my favorite restaurants.  
16 Probably four times, five times.

17 Q And he came to your apartment?

18 A Yes. Two or three times.

19 Q Now, at the time he was living with his parents?

20 A I don't remember exactly when he overlapped to his own  
21 apartment.

22 Q Do you think he had his own apartment when you met him in  
23 2009?

24 A I don't recall.

25 Q Because you said that often he would sleep in a sleeping



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1 bag in his office, correct?

2 A No. He told me. He told me that, you know, he'd do that  
3 sometimes.

4 Q And he would tell you that he did that quite frequently,  
5 correct?

6 A I don't recall. I don't recall quite frequently, but I  
7 certainly recall him telling me he had done it a few times.

8 Q And you'd bought him gifts, correct?

9 A Yes. Through the years, yes, through the years.

10 Q What sort of gifts have you gotten him?

11 A A shirt, a jacket. I think they were mainly clothes.  
12 Again, as I said yesterday in terms of helping him with his  
13 own sharpening his image.

14 Q Right. He's not a particularly fashionable person? No  
15 offense to my client?

16 A That's a good way of putting it.

17 Q Okay. Thank you.

18 There are less diplomatic ways of putting it,  
19 correct?

20 A Yes.

21 Q And from your perspective, it seemed clear that he looked  
22 up to you, correct?

23 A Yes. As I say, from very early meeting him particularly  
24 when he knew I was human resources, I had been in human  
25 resources, I think I did quickly assume a mentor role as I

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1 said previously.

2 Q Didn't he tell you many times that you made him happy?

3 A I don't particularly know the phrase happy, making him  
4 happy, but certainly he said he enjoyed my company and he  
5 liked my positive vibes.

6 Q Didn't he refer to you in messages he sent you as a  
7 blessing in his life? Do you remember him saying that?

8 A There were some very, very praiseworthy comments and  
9 both, I think both of us reciprocated in our messages.

10 Q But it wasn't just comments along the lines of I highly  
11 regard you as a professional. He would say things to you like  
12 you're a blessing in my life.

13 A I don't recall that particular phrase, but, no, there  
14 were some very complementary phrases used.

15 Q And you could tell he felt very close to you, correct?

16 A I think there was, yeah, we developed trust very early  
17 on. I think, yes, we got to -- we were very caring for each  
18 other particularly given, as I mentioned, some of the family  
19 dynamics. There was a lot of caring about the support that we  
20 were giving each other.

21 Q And he told you that his brother has autism, correct?

22 A No. I don't recall him ever saying autism.

23 Q What did he say about his brother?

24 A That he had severe anxiety issues and had problems  
25 socializing outside of the house.

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1 Q And did Martin also tell you that Martin had severe  
2 anxiety issues?

3 A No. Martin, Martin only ever labeled depression.  
4 Depression that he was given medication for.

5 Q So he told you that he suffered from depression?

6 A Yes. He told me that later on probably 2013 or '14 is  
7 when he said the doctor is giving him some medication for it.

8 Q Did he tell you that there were times he couldn't bring  
9 himself to leave his house?

10 A No.

11 Q He never told you that?

12 A No. Not for himself, only for his brother.

13 Q Just for the moment I'm just talking about Martin.

14 Did you have to give him advice from time to time  
15 about hygiene?

16 A A little bit, yes.

17 Q He wasn't brushing his teeth?

18 A He phrased that to me a couple of times. When he slept  
19 in the sleeping bag in the office he wouldn't clean his teeth.

20 Q And fair to say you noticed that he wasn't always taking  
21 good care of himself, correct?

22 A Yes. Both from the health point of view and occasionally  
23 looking disheveled.

24 Q And these were among the ways that you were trying to  
25 help him, correct?

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1 A Yes.

2 Q Because you, you have the good fortune to have moved  
3 through the business world at a fairly high level.

4 Let me rephrase the question.

5 You had a very responsible job at American Express,  
6 correct? You have to answer yes or no.

7 A Excuse me. Yes.

8 Q That's fine. You know how executives behave. You've  
9 seen them?

10 A Yes.

11 Q And from your perspective, fair to say, Martin was doing  
12 things that were not in keeping with being a traditional  
13 executive, fair to say?

14 A Yes, with a qualifier in that, again, part of my job in  
15 human resources is studying the difference between  
16 generations. And I'm an older gentleman. I'm a baby boomer.  
17 Martin was at the time a 20 something or young 30 something,  
18 so I respected that there were differences in the way a young  
19 leader might want to act. So I just want to distinguish, you  
20 know, I don't expect an executive at one large corporation to  
21 necessarily act or look the same as an entrepreneur.

22 Q Did he complain to you a lot that he was sick?

23 A Quite often in his emails he said I have a headache. I  
24 have a headache. I have a cold.

25 Q And did he complain in his emails that you would invite

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1 him out and he said I just can't do it tonight?

2 A Yeah, sometimes he'd say that.

3 Q And often you would invite him places and he would say  
4 he's not well enough to go?

5 A It certainly happened. You know, again, I can't put a  
6 number on that, but it certainly happened.

7 Q And I think we talked when you were talking to my  
8 colleague with the government, you said that there were in  
9 your emails with each other you would express love for each  
10 other, correct?

11 A We certainly used the label, yeah, the word.

12 Q Did you not mean it?

13 A Well, again, I just want to clarify, implication in terms  
14 of loving each other or caring for each other as friends.  
15 Yes, again, part of, you know, what clearly he was enjoying  
16 about my company is the fact that, you know, once we could  
17 remove any question of anything that wasn't outside of being  
18 platonic, you know. He was very comfortable, you know,  
19 because he didn't share any of these emotions with many  
20 people.

21 Q And did he say to you on more than one occasion that you  
22 are the first person that he feels he can be himself with?

23 A I don't remember if it was the first person, but it was  
24 certainly, you know, again, I'm one of the few people.

25 Q And you knew that you had that role in his eyes, correct?

S. RICHARDSON - CROSS - AGNIFILO

1 A Well, as a mentor and someone that he cared about and  
2 trusted.

3 Q But as someone who he viewed as a blessing in his life,  
4 correct?

5 A Again, I don't remember that phrase but.

6 Q Someone one of the few people that he expressed that he  
7 felt happiness with, correct?

8 A Again, using the word "happy" again. You know, I know  
9 that he enjoyed my company and enjoyed my present in his life,  
10 yes, that's the way I'll express it.

11 Q I won't stick to words. I want to talk about concepts.

12 A Okay.

13 Q You were a very special person to him and you knew it?

14 A I think it certainly thought over time, yes.

15 Q And he would say things in emails to you that led you to  
16 believe that he had feelings for you, fair to say?

17 MS. KASULIS: Objection.

18 THE COURT: Sustained.

19 Q He would tell you that he loved you, correct?

20 A He'd used the word in some emails and to my face  
21 sometimes, yes.

22 Q He told you to your face that he loved you?

23 A Yeah.

24 Q And he wrote in an email messages that he loved you,  
25 right?

S. RICHARDSON - CROSS - AGNIFILO

1 A Yes.

2 Q And you wrote in email messages that you loved him?

3 A Sometimes.

4 Q Did you not mean it?

5 A But, again, loving, loving and caring as a friend.

6 Q Do you have other business, male or female business  
7 associates that you're not involved in a relationship with and  
8 you tell them that you love them repeatedly?

9 A Certainly with friends I use it, yes.

10 Q And is that how you were using it with Martin?

11 A As a friend.

12 Q Only as a friend?

13 A Yes.

14 Q Now, you talked yesterday about you would get these  
15 performance reports. Do you remember talking about that?

16 A Yes.

17 Q And in addition to performance reports from time to time  
18 Martin would send you other reports about companies, correct?

19 A No. He'd send his quarterly letter in which he included  
20 reference to other companies.

21 Q Do you remember a company called GenVec?

22 A I remember seeing the name, but I don't remember detail.

23 Q And do you remember him sending you information about  
24 GenVec and a drug that it had failed, a phase three clinical  
25 trial.

S. RICHARDSON - CROSS - AGNIFILO

1 A I don't recall that.

2 Q And he wanted you to have this information. He sent it  
3 to you, do you remember?

4 A I don't recall that.

5 Q And do you recall after he sent it to you there was a  
6 conversation in an email with you and him trying to figure out  
7 if you could see each other soon?

8 A I don't know. I just don't recall the GenVec drug piece.

9 Q And you said to him only if I can touch your soft skin?

10 MS. KASULIS: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Did you ever say that to him?

13 MS. KASULIS: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. AGNIFILO: Your Honor?

16 THE COURT: Do you want to have a sidebar?

17 MR. AGNIFILO: Yes.

18 THE COURT: Okay.

19 (Continued on the next page.)

20 (Sidebar conference.)

21

22

23

24

25



## SIDEBAR CONFERENCE

1 MR. AGNIFILO: This man lied to this jury about  
2 their relationship and I'm going to prove it. I'm going to  
3 prove it.

4 THE COURT: By?

5 MR. AGNIFILO: By his own words.

6 MS. KASULIS: You're asking him questions and he's  
7 saying he doesn't recall.

8 Do you have something to refresh his recollection?

9 MR. AGNIFILO: Yes. If that's the objection, I'll  
10 refresh his recollection, sure.

11 MS. KASULIS: I mean, I'm not certain why you're  
12 doing that.

13 MR. AGNIFILO: No. No. No. That's fine. I'm  
14 happy to do that. I'll refresh his recollection. We're good.

15 MS. KASULIS: If you have something to show him, you  
16 can show it to him to refresh his memory and you can ask him  
17 that.

18 THE COURT: I thought we were talking about GenVec.

19 MR. AGNIFILO: Well, no. There is a context. "Only  
20 if I can touch your soft skin." And I'm quoting.

21 MR. BRAFMAN: He's not speaking to the Judge. He's  
22 quoting from an email.

23 THE COURT: Understood.

24 MR. AGNIFILO: Thank you.

25 MS. KASULIS: So the issue is that he's asking him a

## SIDEBAR CONFERENCE

1 series of questions clearly about an email exchange. If he  
2 wants to say he doesn't recall -- if he wants to refresh his  
3 recollection, he can.

4 MR. AGNIFILO: I will. Absolutely.

5 MS. KASULIS: And then he can ask a question. And  
6 if it's objectionable, we will object.

7 MR. BRAFMAN: So we maybe don't have to come back  
8 here, they opened this door with a crow bar. They suggested  
9 the relationship. Martin was infatuated with him. He didn't  
10 believe Martin was really gay, sat him down on his bed and  
11 confronted him, they started that. The fact is we're not --

12 THE COURT: I get it.

13 MS. SMITH: Your Honor, we need to put something on  
14 the record.

15 MS. KASULIS: Your Honor, we actually contacted  
16 defense this weekend prior to this witness testifying and  
17 asked specifically if they were going to get into this  
18 relationship issue and if they were going to imply or  
19 insinuate that there was a romantic relationship.

20 MR. BRAFMAN: And we said yes.

21 MS. KASULIS: And they said yes. And we asked, we  
22 vetted, we talked about --

23 MR. BRAFMAN: He --

24 THE COURT: Let her finish.

25 MS. KASULIS: We asked, we vetted and we talked

## SIDEBAR CONFERENCE

1 about it with him because we don't do these things lightly.  
2 And so we called them, we asked them. They said they intended  
3 to go into this with the witness, and so when we responded  
4 accordingly with respect to our direct examination and that  
5 was something that we had vetted. So I just want to correct  
6 the record that we opened the door and this is a crow bar.

7 MR. BRAFMAN: No. No. No. That's not what I  
8 meant. She's right about all of that. But what we said was  
9 that we intend to go down that path, but we're not barred by  
10 what the witness says on direct to suggest that that's the  
11 true nature of the relationship.

12 THE COURT: All right. But my question is this. I  
13 know you opened with this whole thing that people thought he  
14 was gay. I just think sexual preference is not relevant in  
15 this case.

16 MR. BRAFMAN: It is.

17 MR. AGNIFILO: He doesn't care about the performance  
18 reports. They were together.

19 THE COURT: In the opening they are talking --  
20 Mr. Brafman went at length about all those perceptions that  
21 people had about Mr. Shkreli, that he's odd, that he's  
22 autistic. We have no evidence that he's autistic. We have no  
23 evidence that he's odd. Numerous witnesses have denied using  
24 these terms to describe him. And now I've heard I guess at  
25 recent sidebars a few days ago that the autism may have

## SIDEBAR CONFERENCE

1 interfered with his ability to form an intent to defraud or to  
2 understand.

3 MR. BRAFMAN: No.

4 THE COURT: Well, I can pull that part of the  
5 transcript, but I think that sexual preference just isn't  
6 relevant.

7 MR. AGNIFILO: It doesn't matter. They're having a  
8 romantic --

9 THE COURT: He's admitted that he's gay.

10 MR. AGNIFILO: It's not about sexual preference. It  
11 could be a man or a woman, two women, two men, it doesn't  
12 matter. He invested with him. They were having a  
13 relationship. That's critical. It's central, Judge.

14 And no one is objecting. We have had this  
15 discussion between us for days now.

16 MS. KASULIS: Your Honor, he wants to ask him about  
17 the nature of his relationship and if that influenced his  
18 decision, he can do that, but to go and try to humiliate this  
19 witness.

20 MR. AGNIFILO: I'm not going to humiliate --

21 MS. KASULIS: You can just ask --

22 MR. AGNIFILO: The relationship took place when they  
23 were together. He's going to lie. I don't get to be stuck  
24 with his answer.

25 THE COURT: One moment. The fact that someone has

## SIDEBAR CONFERENCE

1 made comments of someone's touching soft skin, I mean, I'm not  
2 sure what you mean by a relationship. They're obviously very  
3 close.

4 MR. AGNIFILO: I think they have a romantic  
5 relationship.

6 THE COURT: A sexual relationship?

7 MS. SMITH: Then they can ask him.

8 THE COURT: I think, as Mr. Brafman said, it's 2017.  
9 Are we going to try to humiliate this witness because he's  
10 gay?

11 MR. AGNIFILO: No. You're missing the whole point.  
12 No, Judge, I would never do that. I would never do that in a  
13 million years. I'm surprised we have to have this discussion.

14 The reason I'm doing this is because they're not  
15 arm's length business people. I think they're having a  
16 romantic relationship. I think that's critical to the actual  
17 charge here. He's not invested. They said yesterday, the  
18 performance reports meant a lot to you. They're not. I'm  
19 going to go through --

20 THE COURT: But he's testified both on direct and so  
21 far in court that they're very close. They expressed  
22 thoughts. They do love each other.

23 MR. AGNIFILO: A romantic relationship is different,  
24 Judge. It's different. It is. A romantic relationship is  
25 different. It just -- it's always been different. People who

## SIDEBAR CONFERENCE

1 love each other and are in a romantic relationship are just  
2 different with each other. That's the last thing I'm going to  
3 do because I would never do that. I am not going to embarrass  
4 this man, not in a million years. I would never do that. I'm  
5 trying to establish I think what is a healthy and loving  
6 relationship between two people.

7 THE COURT: All right. That's fine. I do think  
8 though to the extent there's a comment about soft skin, it  
9 could be arguably evidence that there's more than a platonic  
10 relationship.

11 MS. KASULIS: Right.

12 THE COURT: So I think it's fair ground.

13 MR. AGNIFILO: I will. I will.

14 MS. KASULIS: So ask him that.

15 MR. AGNIFILO: I will.

16 THE COURT: I think he can impeach, but I don't want  
17 this to evolve into --

18 MS. KASULIS: That's our concern as well, Your  
19 Honor. That's our concern as well.

20 MS. SMITH: We understand the argument of bias.  
21 That's fair.

22 MS. KASULIS: Right. We get that.

23 MR. AGNIFILO: Okay.

24 THE COURT: So just tread carefully. Don't, you  
25 know, I mean, because as Mr. Brafman said, and I totally

SIDEBAR CONFERENCE

1 agree, this is 2017. We're not going to --

2 MR. BRAFMAN: That's why we can go into this and not  
3 keep it under a rock.

4 THE COURT: Well, all right. It's how it's done and  
5 what is said. So just, you know, guide yourself accordingly.

6 MR. AGNIFILO: All right. Okay. Will do.

7 (End of sidebar conference.)

8 (Continued on the next page.)

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S. RICHARDSON - CROSS - AGNIFILO

1 (In open court.)

2 Q Mr. Richardson, do you remember saying to Martin "only if  
3 I can touch your soft skin"?

4 A I'd have to look. This is on an email or?

5 Q Yes. I'll show it to you.

6 A See, and the context is.

7 Q Understood. It's Defense Exhibit 4218. It's a series of  
8 emails. This is from March 29, 2010 at 9:21 p.m. Just read  
9 it to yourself.

10 Did you write to Martin in an email "only if I can  
11 touch your soft skin"?

12 A Yes, my recollection is this is after he had an infection  
13 on his neck and ear, and I -- and he left it -- he hadn't  
14 medically treated it and then medically treated it. So I  
15 believe here what I'm referring to is the fact that he's now  
16 fixed his skin because he had a very, very nasty looking rash  
17 and infection from his ear and neck. So I'm referring to, I  
18 believe, I believe, because the context, I believe that's what  
19 I'm referring to, that he's now fixed the skin on his neck.

20 (Continued on the following page.)

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S. RICHARDSON - CROSS - AGNIFILO

1 BY MR. AGNIFILO:

2 Q So what you believe when you said, "only if I can touch  
3 your soft skin," you were referring to a rash on his neck?

4 A The fact that he had fixed it, after leaving it alone for  
5 too long.

6

7 Q Do you recall any other conversation in this e-mail or  
8 any other e-mail about a rash?

9 A No, just verbally with him and seeing him of course with  
10 this infection.

11 Q And you have a clear recollection as you sit here today  
12 that that's what you're talking about?

13 A I'm trying -- again, context is important. That's, I  
14 certainly have that recollection. Again, if I'm talking about  
15 skin, his skin infection was probably that's what I'm  
16 referring to.

17 Q Now, to the extent you received periodic performance  
18 reports, correct?

19 A On the MSMB Capital fund.

20 Q Right?

21 A Yes.

22 Q And when you got the periodic performance report on  
23 February 12 at 10:07 a.m., did you ask him how he was feeling  
24 and whether the bubble bath worked?

25 MS. KASULIS: Objection, your Honor.

S. RICHARDSON - CROSS - AGNIFILO

1 THE COURT: I will overrule that objection. Go  
2 ahead and answer it.

3 Q Only if you recall, if you don't recall I can show you  
4 something.

5 A Again, Counsel, it's context again. Because quite often  
6 when he was sick he'd tell me he was sick. I would say things  
7 that again in isolation may sound a bit weird, but when it's  
8 me carrying for him as friend, if it's responding to the fact  
9 that he just told me he's was sick, I might have said, have a  
10 bubble bath, make yourself feel better.

11 Q DX9029, e-mail from you from February 12, 2010, at  
12 10:07 a.m.

13 A I actually did say, "Did the bubble bath work?" which is  
14 consistent again with helping him to try fix a health issue or  
15 feel better about himself.

16 Q That e-mail is in response to him sending a daily  
17 performance report, right?

18 A But, again, we possibly had spoken separately during the  
19 day. Again, Counsel, I don't have the context of the rest of  
20 the discussions that might have triggered that. I did say,  
21 "Did the bubble bath work," again.

22 Q I'll give you the whole e-mail, I want to make sure you  
23 have the right context. Here is the whole e-mail. Fair to  
24 say he's sending you a performance report, right?

25 A Then I'm probably speaking to him on the phone

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1 separately.

2 Q In response to you getting the performance report you ask  
3 him about a bubble bath?

4 A Again, it's coming from my personal e-mail just checking  
5 in with him. I called it "checking in." I changed the title  
6 to checking in, I changed the subject but I used the same  
7 e-mail.

8 Q He sends you your daily performance report. He tells you  
9 how your fund is doing. You change the subject, literally and  
10 figuratively --

11 MS. KASULIS: Objection, your Honor.

12 THE COURT: Sustained.

13 Q You got an e-mail from Martin with the performance report  
14 for the fund, correct?

15 A Yes.

16 Q You changed the subject line of the e-mail, correct?

17 A Yes.

18 Q To "checking in," correct?

19 A Yes.

20 Q And you asked him how the bubble bath worked or if the  
21 bubble bath worked, correct.

22 A Yes.

23 Q All right. You didn't ask him anything about what was in  
24 the performance report in that e-mail, correct?

25 A No.

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1 Q Thank you. I'm done with this, thank you.

2 This was the performance report sent you to on  
3 February 12, 2010, correct?

4 A The one you just showed me? Yes.

5 Q Did you frequently, when you got these performance  
6 reports, change the subject line then send him a personal  
7 e-mail in exchange?

8 A Occasionally, I think. All of it was coming to my  
9 personal e-mail address. I just used whatever the last e-mail  
10 was that I received quite often.

11 Q Do you remember if in response to the performance report  
12 from March 7, 2010, you told him you hoped he was enjoying the  
13 lovely day and that he was headache free?

14 A I quite often checked in with him, particularly if he  
15 told me he was ill.

16 Q But you're getting these performance reports, correct --

17 A Yes.

18 Q -- on a regular basis?

19 A Daily.

20 Q Daily. You're using these e-mails that he's sending you  
21 to send personal emails back to him, correct?

22 A It's all in my personal e-mail account, so.

23 Q My point is you're not asking questions about the fund?

24 A Separately, I might be verbally when I update with him.

25 Q But you agree with me -- do you recall specifically what

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1 you might have said on March 7, 2010?

2 A No.

3 Q I'm going to show you Defense Exhibit 9030. I'm going to  
4 ask if it refreshes your recollection, an e-mail March 7,  
5 2010, from you to Martin.

6 A Yes.

7 Q He sent you a daily performance report?

8 A Yes.

9 Q You asked him how he was feeling?

10 A Yes.

11 Q Which is a nice thing.

12 A Yes.

13 Q Because you cared about him?

14 A Yes.

15 Q You cared about him, you asked him how he was feeling,  
16 right?

17 A Yes.

18 Q Then you're not asking about the performance report or  
19 about the fund in that e-mail, right?

20 A Not in this e-mail. But again, these are daily e-mails.  
21 On the monthly one I might have questions on the fund, not  
22 daily.

23 Q At some point you went to the MSMB Capital offices,  
24 correct?

25 A Yes.

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1 Q And those were in lower Broadway?

2 A Yes, Broadway close to Wall Street.

3 Q You said I think you testified yesterday that you went  
4 there and that Martin was there, correct?

5 A Yes.

6 Q And Marek was there?

7 A Yes.

8 Q I think you described the setting as sort of a, I think  
9 you put it, not a huge office, correct.

10 A That's correct.

11 Q It was actually quite a small office; fair to say?

12 A Five or six work stations, I think two offices.

13 Q Sort of a humble, paired down office?

14 A Yes.

15 Q Obviously a start-up company.

16 A Yes.

17 Q There is no pretensions about it, right?

18 A That's right.

19 Q It was two young guys with a start-up hedge fund, right?

20 A Yes, back to the office question again? Sorry.

21 Q Marek was there, right.

22 A Yes.

23 Q Martin was there?

24 A And one other.

25 Q The third guy was even younger than them. You said he

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1 was junior?

2 A His position was junior, I wasn't casting any question on  
3 his age.

4 Q And you knew what you were getting into. You were going  
5 to invest with these two young guys out of this small office  
6 in lower Broadway?

7 A Yes.

8 Q And soon after you decide to invest with them, Martin  
9 tells you he's dissolving the fund.

10 A A few weeks later, yes.

11 Q A few weeks later, right, he sends you an e-mail. He  
12 says, "Marek and I have irreconcilable differences. I'm  
13 dissolving the fund."

14 A Yes.

15 Q You go down to lower Broadway, two young guys in this  
16 office, and couple weeks later Martin says we're dissolving  
17 the fund, and you decide to stick with it, right?

18 A After I met with them and help reconcile them.

19 Q Right. So you met with -- you met with Martin right soon  
20 thereafter, you had dinner. Do you recall having dinner with  
21 him after you were in the office?

22 A It was probably a dinner; I met with him about the  
23 subject.

24 Q You and he discussed the business, right.

25 A Yes.

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1 Q Just the two of you at dinner.

2 A Yes.

3 Q Do you remember where you went?

4 A No.

5 Q And then you met with Marek?

6 A Yes, who had been on vacation for a few days, when he  
7 came back I met with him.

8 Q You told Martin to try to stick it out, right?

9 A After I had my discussion with Marek, because Martin  
10 believed it couldn't be redeemed, the relationship couldn't be  
11 redeemed. And after my meeting with Marek I could see a  
12 glimmer of hope that it could be.

13 Q Then you basically, you tried to put them back together  
14 so the business would work?

15 A I suggested, I had discussions with both of them, but I  
16 left it for the two of them to see if they could figure it  
17 out.

18 Q And they figured out.

19 A They figured out, yes.

20 Q With your guidance?

21 A I think I acted as a catalyst with my discussion, yes.

22 Q I think you testified yesterday from time to time Martin  
23 would send you these -- you testified even a little while  
24 ago -- these periodic letters describing different stocks?

25 A Yes, investor commentaries, I think the plan was



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1 quarterly.

2 Q Fair to say Martin, you knew because you got to know  
3 Martin fairly well, he worked very hard; fair to say?

4 A Oh, yes, he worked very hard.

5 Q He worked days and nights?

6 A He worked extensively long hours.

7 Q Every day?

8 A I can't speak to the weekends, but certainly often a  
9 weekend too.

10 Q Did you know him to take a pleasure vacation?

11 A Certainly not this early in our friendship.

12 Q At any point?

13 A He went to Italy. He went to Italy with his girlfriend  
14 in 2013.

15 Q And other than going to Italy with his girlfriend in  
16 2013, anything else?

17 A No. He did -- when he did trips for business he quite  
18 often took three or four days. If he went to the West Coast  
19 he would take a weekend for himself afterwards on the back of  
20 another trip.

21 Q Part of what you were counseling him to do was take more  
22 time for himself?

23 A Yes.

24 Q You thought he worked too hard?

25 A Generally, yes, certainly in the early years.

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1 Q You thought he worked so hard to the point he was  
2 actually effecting his health?

3 A Yes, I did.

4 Q You thought he was, working so hard it actually impacted  
5 on his ability to take care of himself?

6 A Certainly some of the physical aspects of looking after  
7 himself.

8 Q Like what?

9 A The infection I talked about before, which may or may not  
10 have come from eating, sleeping bad, that sort of thing. And  
11 the headaches the frequent headaches I noticed in the e-mails.

12 Q Did you notice that he was often complaining to you that  
13 he was getting teeth extracted?

14 A I don't remember a discussion around teeth extractions.  
15 I know he had dental issues, I don't remember him sharing the  
16 specifics of it.

17 Q Now, at one point you said in 2010, you and he started  
18 having discussions around building a company, correct?

19 A That was later in 2010 I believe, yes.

20 Q Could it have been the summer of 2010?

21 A It could have been summer, the discussion was around this  
22 issue of the short sales various the long that I had talked  
23 about before. And the desire to want to be behind drugs that  
24 were succeeding not failing, that was the genesis of my first  
25 discussion with him.

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1 Q It could have been as early as summer 2010?

2 A Certainly the issue of long versus short sales.

3 Q So the jury understands, short sales are when you think  
4 that stock is going to go down, right? And long sales are you  
5 think the stock is going to go up, you buy the stocks and  
6 hold?

7 A Yes.

8 Q One of the difference is in long sales the idea is you  
9 think this is a fundamentally good company that is doing  
10 something worthwhile enough that the stock will increase in  
11 price?

12 A Yes.

13 Q With the short sales, at least in the pharmaceutical  
14 industry, correct me if I'm wrong, it's very often that a  
15 company will have a drug that is not going to pass FDA  
16 approval and you can predict that?

17 A Through the clinical trial process it may not come out  
18 positively.

19 Q One of the things you said yesterday was that Martin was  
20 especially good at predicting which drugs would not pass the  
21 FDA clinical process, correct?

22 A That's part of what he'd written in one of his letters.  
23 He'd had more success with short sales versus the long.

24 Q You preferred to be in long sales with companies that had  
25 inherent value, correct?

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1 A Yes.

2 Q You and Martin were talking about that in the summer/fall  
3 2010; fair to say?

4 A Certainly by the fall, yes.

5 Q You said I think yesterday that at one point he -- I  
6 think the way you phrased it -- "he went off and he did  
7 research," correct?

8 A Research? Sorry? About starting a company?

9 Q Correct.

10 A Yes, yes. Late in 2010 he had said to me, "Give me time  
11 to go away, do my research. I want to bring some ideas back."

12 Q By research, do you know what he was doing?

13 A No, he specifically said, "give me time to go away and do  
14 my research."

15 Q Did you understand him to be going away, physically going  
16 away? Or, I'm going to go in my Martin Shkreli hubble and  
17 think and read?

18 MS. KASULIS: Objection.

19 THE COURT: Sustained.

20 Q Did you think he was physically going away?

21 A I didn't think he was physically going away.

22 Q What did you think he was doing?

23 A He would do his own desk research and figure out what is  
24 the market opportunity.

25 Q At one point he came to you and he says, "I think I

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1     figured it out," right?

2     A     Yes, about March of 2011.

3     Q     Do you recall having discussions with him about Retrophin  
4     before March of 2011?

5     A     I recall him updating me a little bit about his progress.  
6     I don't recall the name appearing much before that.

7     Q     You know of a company called Lonza?

8     A     I don't recall that.

9     Q     A Swiss biochemical company?

10    A     Lonza, I don't have any recollection at the moment.

11    Q     Do you recall Martin telling you that he had actually  
12    hired a Swiss company to basically try to build molecules?

13                 MS. KASULIS:  Objection.

14                 THE COURT:  Sustained.

15    Q     Do you remember him telling you anything about the  
16    building of molecules?

17    A     He certainly talked about molecules in the sense of can  
18    we take one molecule and use it differently for different  
19    diseases.  He talked about it in a broad application with me.

20    Q     Okay.  Do you recall him having conversations with you  
21    about this process as early as February of 2011?

22                 MS. KASULIS:  Objection.

23    Q     Only if you remember?

24                 THE COURT:  All right, clarify "this process."

25    Q     The process of using molecules for other purposes in the

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1 creation of a potential drug for disease?

2 A I remember him discussing, raising that with me. I don't  
3 remember the time table.

4 Q Do you remember him telling you in February that  
5 Retrophin was growing like a weed?

6 THE COURT: February of what year, sir?

7 BY MR. AGNIFILO:

8 Q February 2011.

9 I can show you something, Defense 4221, an e-mail  
10 from Martin to you, February 26, 2011, at 12:22 a.m.

11 A Yes, I do recall this, just the time I couldn't remember  
12 the time.

13 Q Very good. Tell us what you recall.

14 A That he was starting to put the company into motion,  
15 starting to put the company in motion, establish the investors  
16 behind it. That's all I remember in this time period.

17 Q That's February 2011, correct?

18 A This is dated February, the end of February.

19 Q Very good, thank you, sir.

20 Do you recall you and he having what seemed to be  
21 excited communications about Retrophin in February 2011?

22 A Again, I don't recall the exact times; but yes, the  
23 excitement he was now bringing to life for me, the idea that  
24 we talked some months earlier, yes, I do remember the  
25 excitement.

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1 Q Because this is something you really wanted him to do,  
2 correct?

3 A Yes, something I felt personally very, very passionate  
4 about in terms of a legacy I could help contribute towards.

5 Q You said yesterday you had realized success in the  
6 business context of your life, correct?

7 A Yes.

8 Q And where you were in your life at that time, is you  
9 wanted a legacy of having done something actually good and  
10 meaningful in your time here?

11 A Specific to the impact of people's lives through  
12 hopefully bringing drugs to cure or help cure diseases.

13 Q The one doing the work at this period of time to try to  
14 bring that about was Martin, correct?

15 A Yes.

16 Q At one point in March he sort of unveiled Retrophin,  
17 correct?

18 A That's right.

19 Q We're going to look at what is admitted into evidence as  
20 Government's Exhibit 122-6, the first page. You talked about  
21 this yesterday with the Government. This is the Retrophin  
22 presentation from March of 2011, correct?

23 A Yes.

24 Q It says, "Martin Shkreli, Interim CEO," right?

25 A Yes.

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1 Q You answered questions that the Government was asking you  
2 yesterday about why he would be the interim CEO, fair to say  
3 he has some of the qualities but not all the qualities as  
4 someone you would typically hand-pick as a CEO; fair to say?

5 A That's fair to say, in terms of a operating company, yes.

6 Q So he was going to get the company off the ground, right?

7 A Yes.

8 Q Because essentially he was providing the scientific  
9 content to the company, correct?

10 A Well, again, until we go through the presentation I'm  
11 still learning more. This is exactly what I'm -- he's  
12 starting to unveil what it's going to look like. I don't know  
13 about roles in context yet, Counsel. I wanted to clarify my  
14 direct answer your question.

15 Q The next page is the executive summary. The executive  
16 says, "Retrophin is a bio technology company dedicated to the  
17 developing drugs for rare and life-threatening diseases." You  
18 see that, right?

19 A Yes.

20 Q "Specifically, our mission is to become the first company  
21 to receive FDA approval for the Duchenne Muscular Dystrophy  
22 drug." You understand that was the point of Retrophin,  
23 correct?

24 A Yes.

25 Q That was the whole reason for Retrophin's existence



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1 right?

2 MS. KASULIS: Objection.

3 THE COURT: Sustained.

4 Q At this point in time, this is the executive summary  
5 about what the company is going to do, correct?

6 A Certainly in terms of, he called it a mission, but of  
7 course at the end of the day if there are investors and  
8 shareholders, it has to be a return to them not just the drug  
9 approval as well.

10 Q You thought that trying to be the first company to bring  
11 about a cure for Duchenne Muscular Dystrophy was certainly a  
12 worthwhile endeavor from your perspective?

13 A Yes.

14 Q It's a horrible disease; fair to say?

15 A Yes.

16 Q There is no cure.

17 A I don't know whether there cure is the right word, but in  
18 terms of treatment, extensive treatment. Cure is a lovely  
19 aspiration.

20 Q It's a disease where there is no meaningful way of  
21 defeating the disease?

22 MS. KASULIS: Objection.

23 THE COURT: Sustained.

24 Q From your perspective, I'm really talking about, because  
25 you said you wanted a legacy, correct? You wanted Martin

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1 Shkreli to stop shorting stocks, correct? Not stop, but you  
2 want him to add something to his --

3 THE COURT: Counsel, I'm going to tell you now you  
4 need to ask one question at a time; there are two right there.

5 MR. AGNIFILO: Very good, Judge.

6 Q You were looking for Retrophin to be your legacy; fair to  
7 say?

8 A Again, you position it such a broad way. An important  
9 part of my legacy. I'm a brother. I'm an uncle. All of  
10 those things. Part of my legacy was I want to do this. I  
11 don't want to give the impression this is the only part of my  
12 legacy.

13 Q This is part of your legacy; fair to say?

14 A I was looking for this kind of direction as part of my  
15 legacy.

16 Q Something as important as curing this particular disease  
17 or bringing about a potential cure was certainly something you  
18 thought was worthwhile?

19 A It was certainly worthwhile.

20 Q When Martin gave you this presentation, you thought he  
21 was on to something; fair to say?

22 A Yes, it seemed like a very good starting position.

23 Q Let's go to the next page. So we're clear, this  
24 highlighting is mine.

25 It says, "Pipeline, RE-001. Is our main asset in

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1 preclinical development for Duchenne Muscular Dystrophy." You  
2 see that, right?

3 A Yes.

4 Q "RE-001 replaces the missing protein that causes Duchenne  
5 Muscular Dystrophy, dystrophin, by providing a recombinant  
6 supply of a very similar protein," right?

7 A Yes.

8 Q Now the idea here is that this dystrophin is the type of  
9 protein that the cell needs to be healthy, correct?

10 MS. KASULIS: Objection.

11 THE COURT: Sustained.

12 Q This is a company that you ended up being on the Board  
13 of -- let me ask you, do you know how Martin plans for this to  
14 work?

15 A Even for this presentation he's laying out the next  
16 steps. I'm clearly not a medical expert. Once we get into  
17 the medical analysis, I'm not an expert.

18 Q But you knew that he had an idea even in March of 2011  
19 that could be a significant idea for the future of the  
20 company; fair to say?

21 A Again, just to go back to saying this is the first time  
22 I'm seeing him layout the business plan. I'm assimilating it  
23 as I'm reading it at that point in time. I was certainly  
24 excited about it. But I -- this is the first time I'm going  
25 through it at this time.

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1 Q Right. And the idea is that he was going to get  
2 dystrophin into the cell. Isn't that like kind of the magic  
3 bullet of conflict all of this is about?

4 MS. KASULIS: Objection.

5 THE COURT: Sustained.

6 MR. AGNIFILO: Can we approach?

7 THE COURT: Yes.

8 (Continued on the next page.)

9 (Sidebar conference.)  
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## SIDEBAR CONFERENCE

1 MR. AGNIFILO: He can't explain the presentation.  
2 If he doesn't know the answer, he doesn't know the answer.

3 THE COURT: You're assuming medical facts not in  
4 evidence.

5 MR. AGNIFILO: I'm assuming he read the  
6 presentation.

7 THE COURT: I think you should ask is this  
8 Mr. Shkreli's idea, but you're almost implying that this  
9 witness should be able to say, 'this is great idea, I think  
10 it's going to work.'

11 MR. AGNIFILO: But he might think it's a great. He  
12 thinks it's a great idea. He's putting his time and money  
13 into it.

14 THE COURT: Asking specific medical questions about  
15 the chemistry of this product and how it works in the cell and  
16 the disease process is something he --

17 MR. AGNIFILO: I'll stick what is in evidence.  
18 That's fine.

19 MS. KASULIS: Thank you, your Honor.

20 (End of sidebar conference.)

21 (Continued on the next page.)  
22  
23  
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1 (In open court.)

2 BY MR. AGNIFILO:

3 Q We'll do it this way. Next page, "R0001 mechanism of  
4 action," do you see that on the screen?

5 A Yes.

6 Q There is a diagram there?

7 A Yes.

8 Q Do you know if Martin drew that? Do you know?

9 A No.

10 Q "Dystrophin anchors the cell membrane, known as the  
11 sarcolemma in muscle cells to actin filaments. This provides  
12 vital cell stability." That's what it says?

13 A That's what it says.

14 Q "Dystrophin is missing or unusable in Duchenne Muscular  
15 Dystrophy patients." That's what it says?

16 A Yes.

17 Q "RE-001 would replace the missing dystrophin actin  
18 connection and restore muscle cell stability. The only known  
19 problem in Duchenne Muscular Dystrophy," correct, that's what  
20 it says?

21 A That's what it says.

22 Q Fair to say you don't know exactly how the science works,  
23 correct?

24 A No, definitely not qualified on the science side.

25 Q But you trusted that Martin did; fair to say?

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1 A Yes. And that he started a network with some scientific  
2 groups and individuals as he did his research.

3 Q Do you know that he went up to Harvard to talk to a  
4 doctor at Harvard?

5 A I don't remember Harvard specifically.

6 Q Do you remember Darren Blanton being around at this time?

7 A No, I only heard the name. I thought he was an investor  
8 in the MSMB fund. I could be wrong. I know the name, but I  
9 didn't know who he was.

10 Q After this presentation, you understood that Martin was  
11 working on building Retrophin, correct?

12 A Yes.

13 Q And you were working on building Retrophin; fair to say?

14 A In a small way at that point.

15 Q So the one who was building Retrophin in February/March  
16 April 2011 really was Martin, correct?

17 A Yes.

18 Q From your perspective, were there any other people that  
19 played significant roles in helping him?

20 A No. He had reaching out, I don't remember when colleague  
21 Andrew Vaino came on board. At this point, no, Martin was the  
22 visible end of this work to me.

23 Q And so Martin is working on Retrophin and also working on  
24 MSMB Capital, correct?

25 A Correct.

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1 Q So he's doing both at the same time?

2 A Yes, with Marek the portfolio manager on the MSMB Capital  
3 fund.

4 Q In the beginning do you remember they were doing both  
5 that out of their office in lower Broadway?

6 A I don't remember it starting at lower Broadway. I don't  
7 remember when they moved to the new office. This is a timing  
8 issue. I know they were sharing an office from a  
9 cost-effective point of view in terms of two entities.

10 Q You remember in April 2011 they went to Madison Avenue?

11 A Sounds about right in terms of the office move time.

12 Q Then after April 2011 Retrophin and MSMB were both out of  
13 the office in Madison Avenue, correct?

14 A Yes.

15 Q I think you testified yesterday that they had common  
16 employees, correct?

17 A Yes.

18 Q And they had I think you said common facilities?

19 A Yes, the same real estate.

20 Q The same physical office?

21 A Same physical space.

22 Q Do you know if they had the same computers?

23 A I'm assuming so, but I can't answer if they were distinct  
24 terminals for an activity.

25 Q And Martin was essentially running MSMB, correct, with



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1 Marek?

2 A With Marek.

3 Q And Martin was essentially running Retrophin, correct?

4 A Yes.

5 Q Now, I think yesterday you said that MSMB and Retrophin  
6 were on parallel tracks. Do you remember when you said that?

7 A Again, can you give me the context?

8 Q I was going to ask you what you meant. Is that true? Do  
9 you view them as running on parallel tracks?

10 A In terms of resources, the resources that we talked about  
11 being shared. I think that might be a reference to parallel  
12 tracks. They were distinct entities but sharing resources,  
13 running them, I think that's what I was saying.

14 Q That's fine. One of the problems that you were aware  
15 that Retrophin was having in these early days is how was it  
16 going to raise money, correct?

17 A In any start-up that's always a critical question.

18 Q That's what every start-up faces at one point or another?

19 A That's fair.

20 Q At one point you said that there was a conversation that  
21 you and Martin had about Vivo Ventures. Do you remember that?

22 A That was well into 2012.

23 Q Okay, all right. Do you remember having conversations  
24 with Martin in 2011 about the best way to try to raise capital  
25 for Retrophin?

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1 A I don't remember a distinct dialogue around that. We  
2 talked about it generally. I don't remember a distinct  
3 discussion.

4 Q You were always very much against the venture capital  
5 group, correct?

6 A The Vivo one, which is late 2012.

7 Q Right. But weren't you against venture capital for  
8 Retrophin as a general concept?

9 A What I was against, was giving up control.

10 Q Fair to say that's what would happen if you brought a  
11 venture capital firm on board?

12 A Most likely, most likely.

13 Q Tell the jury, if you would, why that would be? Why does  
14 bringing a venture capital firm into a business cause the  
15 preexisting people who control the business to have less  
16 control?

17 A Because basically the venture capital's intent is to try  
18 to get as much profit or value out of that entity. So they  
19 want to bring their own people in, their own people in to run  
20 it, and potentially run it quite differently so they can  
21 leverage the assets that they are putting their money into.

22 Q You didn't want that to happen?

23 A At the end of 2012, which is the first time I was aware  
24 of a venture capital proposal.

25 Q We'll talk now about 2012, end of 2012. You were against

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1 the venture capital company coming into Retrophin?

2 A Yes.

3 Q And you Martin had that discussion; fair to say?

4 A Yes.

5 Q And Martin said to you that he had been speaking to this  
6 venture capital company, Vivo Ventures, right?

7 A Yes.

8 Q And he said they could bring a lot of much-needed money  
9 to the company, right?

10 A Yes.

11 Q He says, "But we would be giving up the baby," right?

12 A That was his phrase, yes.

13 Q From your perspective, did he say that he viewed  
14 Retrophin as his baby?

15 A I don't remember if it was an invert the way he wrote it.  
16 He looked -- he expressed, he knew I was part of the genesis  
17 of Retrophin as well, so I read it in that light, we would be  
18 giving up the baby.

19 Q That's what he said, " we would be giving up the baby,"  
20 you and he would be giving up the baby?

21 A Collective baby.

22 Q The baby is Retrophin?

23 A Yes.

24 Q And you advised him to not go with the Vivo Venture  
25 Group, correct?

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1 A I said I was against it. Again, it wasn't in the spirit  
2 of what I thought what we talked in 2010. At this point we  
3 had no drugs. We had nothing to take to market. The idea of  
4 starting a legacy was evaporating, that was my concern.

5 Q Fair to say that you thought that the company was founded  
6 on a potentially very good idea?

7 A Yes.

8 Q And the concern is, an idea without any money just  
9 remains an idea, correct?

10 A In many cases, yes.

11 Q And so what you were struggling with is how to get the  
12 money to build this into a profitable company?

13 A I think not just me, the collective all of us who were  
14 involved with Retrophin, yes, come up with a right financing  
15 strategy where we could maintain control, was the genesis of  
16 my question of push back to him.

17 Q You ultimately decided that the best way to raise the  
18 company would be a reverse merger, correct?

19 A Yes, by the end, now it's end of 2012, yes.

20 Q There is nothing wrong with a reverse merger, correct?

21 A No, no.

22 Q Just tell the jury very quick what a reverse merger is?

23 A Again, it's when one business, in particular a start-up  
24 business, buys the shell company that we talked about before.

25 A shell company is, again, something that is listed but

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1 basically has no operations. The owner is comfortable to sell  
2 that shell company to an existing company, so when they merge  
3 the company, in this case Retrophin, can use the operating  
4 over-the-counter approval that that shell company already  
5 holds.

6 Q Do you recall in about April 2012 a patent for something,  
7 for a drug PKAN, the disease PKAN?

8 A Yes. I don't remember the exact timing, but PKAN, yes, I  
9 remember PKAN.

10 Q What do you remember about?

11 A That PKAN was, is, a particularly nasty disease that  
12 impacts young children. And it's a neurological one, where  
13 slowly their body stops operating. It's a very, very dramatic  
14 and aggressive disease. It didn't have a cure or any really  
15 meaningful treatment.

16 Q And Duchenne Muscular Dystrophy is a disease that  
17 afflicts children as well, right?

18 A Yes.

19 Q Do you recall there was a drug that Retrophin patented,  
20 RE-024?

21 A Yes.

22 Q What do you remember about that?

23 A That is actually the one focused on this PKAN disease.

24 Q Fair say that was an important step forward, correct?

25 A Yes, it was. Again, it hadn't reached drug standards yet

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1 in terms of markets. It is still in clinical trial. This was  
2 the first, a very exciting first look that this might have a  
3 possibility to impact those poor children positively.

4 Q So Retrophin was going in the direction that you had  
5 hoped; fair to say?

6 A Yes.

7 Q So now it had a patent, correct?

8 A Again, I want to separate, the ability to patent is very  
9 different to having a drug to take to market and commercially  
10 sell and get to the patients.

11 Q It's not a drug that you can buy, but it is a patented  
12 product.

13 A Yes, that we can move forward as a company exclusively to  
14 build a towards clinical trial to a drug.

15 Q And fair to say that Martin was instrumental in securing  
16 the patent?

17 A Yes, he was. I believe, going from discussions, were  
18 that it was also Marek Biestek and Andrew Vaino, two of the  
19 key players, working with Martin in shaping how do we come up  
20 with that particular PKAN piece.

21 Q You talked a lot on direct examination about this  
22 Capitalization Table from November 19, 2012, 122-32. Do you  
23 see it on your screen okay?

24 A Yes.

25 Q An e-mail from Martin to you and to Steve Aselage?

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1 A Yes.

2 Q "We have a lot going on, but this is I think what the  
3 founders Cap Table should look like versus what it does."

4 A Yes.

5 Q So he's talking about sort of something that right now  
6 doesn't exist, he says what it should look like; fair to say?

7 A The left hand side is what it is today, just to clarify,  
8 and the right-hand side is what it could look like and should  
9 look like.

10 Q He says, "I will talk to Evan Greebel in a few minutes if  
11 doing something like this is even possible and/or to what  
12 degree it can be done." Do you see that?

13 A Yes.

14 Q So as he's writing this to you, he's not even sure that  
15 those columns on the right is something he can do, correct?

16 A Yes.

17 Q It's fair to say it's something that you knew he wanted  
18 to do, right?

19 A Yes, he told me verbally it would happen, for me at least  
20 it would happen.

21 Q What he's actually writing in the e-mail is he has to  
22 talk to the lawyer, Evan Greebel, right, that's what he's  
23 saying?

24 A Yes.

25 Q Because he doesn't even know if this is possible to

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1 accomplish, correct?

2 A Yes.

3 Q Nothing in this is a promise, correct?

4 A No, this is not a promise this page.

5 Q And he says, "This is for informational purposes only,"  
6 you see that there, right?

7 A Yes.

8 Q "It basically reflects my vision of what folks deserve in  
9 relation to the founding of the company," you see that?

10 A Yes.

11 Q "As opposed to where they are at the moment," correct?

12 A Yes.

13 Q So he obviously greatly valued your role as one of the  
14 founders of the company, correct?

15 A Yes, founder may be -- well, in this context, yes,  
16 founder is okay.

17 Q It's his words.

18 A Yes.

19 Q "Please keep in mind, I'm happy to move forward with not  
20 changing the Cap Table as well. Having said that, I would  
21 like to highlight the discrepancy (self-afflicted)." Do you  
22 see that there?

23 THE COURT: I'm wondering if the jurors might need a  
24 break right now. Do you need your afternoon break? Why don't  
25 we ask you to retire to the jury room, refresh yourself and



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1 we'll bring you back.

2 Sir, you may step down. Ten minutes roughly, thank  
3 you.

4 (Jury exits the courtroom.)

5 (Whereupon, the witness steps down.)

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1 THE COURT: Have a seat.

2 Would you mind getting the witness back?

3 (Jury enters the courtroom.)

4 THE COURT: All jurors are present. Please have a  
5 seat everybody.

6 MR. AGNIFILIO: May I proceed, Judge?

7 THE COURT: Yes.

8 CROSS-EXAMINATION (CONTINUED)

9 BY MR. AGNIFILIO:

10 Q We spoke on direct examination about a email that you got  
11 from Marc Panoff on September 9th, 2013.

12 Do you remember that testimony?

13 It's in evidence, I'll put it on the screen.

14 A The agenda, our meeting agenda?

15 Q Yes.

16 A Yes, I do recall.

17 Q The email is from Marc Panoff -- it's from Marc Panoff to  
18 you, to Steve Aselage, and Martin Shkreli, correct?

19 A Yes.

20 Q And it's also copied to Evan Greebel at the Katten law  
21 firm, correct?

22 A Yes.

23 Q And it says the subject is board agenda, right?

24 A Yes.

25 Q And then there are a number of attachments. Do you see

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1 that there are a number of attachments listed there?

2 A Yes.

3 Q And two of the attachments, one says "Geller consulting  
4 agreement."

5 Do you see that?

6 A Yes.

7 Q And then one says "consulting agreement Banta."

8 Do you see that?

9 A Yes.

10 Q Okay. So these were sent to you. This document, this  
11 email was sent to you, correct?

12 A Yes.

13 Q And you got the attachments as well, right?

14 A Yes, we did.

15 Q Okay. So you got the Geller and the Banta consulting  
16 agreement sent to you from Marc Panoff, correct?

17 A Yes.

18 Q This is all part of the same exhibit in evidence.

19 This is the Geller consulting agreement.

20 Do you see it?

21 A Yes.

22 Q Okay. And so you don't dispute that you got this sent to  
23 you from Marc Panoff on September 9th, 2013, correct?

24 A That's correct.

25 Q Did you read this?

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1 A Certainly I -- I skimmed it. These are ones that came  
2 very late to the meeting, or just before the meeting was  
3 called. So I skimmed them, yes.

4 Q Okay. So you knew that this was a consulting agreement  
5 and release, because that's the title of the document, right?

6 A I certainly skimmed it, so I would have read -- I would  
7 have read the heading, I didn't register it, but I read the  
8 heading.

9 Q Okay. And did you have the phone call, the board phone  
10 call without knowing what this was?

11 A Again, we received it almost immediately before the call,  
12 so there wasn't the chance to read it in great deal, and we  
13 didn't discuss it on the call, because they were only brought  
14 back to us. So I didn't dwell and them, because I knew it was  
15 going to go brought back to the board, at which point I could  
16 look at it in the detail.

17 Q Would it possible to put the call off until you had the  
18 chance the read the attachments?

19 A I'm sorry, what's the point, Counselor?

20 Q Is it possible to put off the call until you have a  
21 chance to read the attachments?

22 A Well, that was basically, as you heard on direct, part of  
23 what I was asking Marc and others to do, is that we had to, as  
24 a board, we should be receiving these documents much earlier  
25 so we could do justice to the them before the discussion.

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1 Q I understand that you're saying you didn't get it in  
2 time, but isn't it something that you have the ability to do  
3 to say I don't want to have the call now, I'm not ready; fair  
4 to say?

5 A No, I believe there were time sensitive items on the  
6 agenda that we had to proceed with and we couldn't delay the  
7 call because of other agenda items.

8 Q So this is the first page of the Alan Geller consulting  
9 agreement and release, correct?

10 A Yes.

11 Q Okay. It's a seven page -- I can show it to you just so  
12 we can have it. It's part of that same exhibit.

13 THE COURT: Can we just, for the record, identify  
14 the exhibit number?

15 MR. AGNIFILIO: Sure. It's the same exhibit, Judge,  
16 it's all attached to 122-48.

17 THE COURT: Thank you.

18 MS. KASULIS: It's Tab 54.

19 THE WITNESS: Okay.

20 BY MR. AGNIFILIO:

21 Q Okay.

22 A Thank you. Or maybe 55.

23 Q Well, there's two of them. There's Banta and there's  
24 Geller. This one is Geller.

25 A Yes.

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1 Q Tell me when you have it.

2 MS. KASULIS: Can we have a reference?

3 MR. AGNIFILIO: For the time being, I just want to  
4 establish how many pages the document is.

5 A Yes, I have it.

6 Q Okay. It's a seven-page document, right? You can take  
7 your time and thumb through it.

8 THE COURT: "It" being the Geller consulting  
9 agreement?

10 MR. AGNIFILIO: Yes, yes. This is the Geller  
11 consulting agreement.

12 A Yes.

13 Q Okay. And on the first page, it indicates the  
14 compensation for Alan Geller in exchange for his being a  
15 consultant, correct?

16 A Yes.

17 Q All right. And just so the jury can see it as well,  
18 there's a break down of different numbers of shares of common  
19 stock that he's going to get in exchange for him being a  
20 consultant, correct?

21 A Yes.

22 Q And then we'll turn to the other agreement. The  
23 agreement -- other agreement -- same exhibit, I think it's  
24 probably right after that one in your book there, is in regard  
25 to Ken Banta, correct?

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1 A Yes.

2 Q And Ken Banta also is promised on page 1, certain shares  
3 of stock in exchange for his role as a consultant, correct?

4 A Yes.

5 Q All right. Now, through these consulting agreements, the  
6 company is looking to give these shares of stock to these two  
7 people for their role in being consultants, correct?

8 A That's certainly what the agreement is outlining.

9 Q Okay. And when Marc Panoff sent you these agreements at  
10 4:32 p.m. on September 9th, 2013, he sent them to you so you  
11 could read them, correct?

12 A Yes. For a 5:30 call.

13 Q Okay. And now you knew that these were things that the  
14 board was being asked to consider, correct?

15 A Yes.

16 Q Okay. And you knew that as of September 9th, 2013; fair  
17 to say?

18 A Once I received them, yes.

19 Q Okay. And fair to say that these agreements were -- you  
20 had further discussions with at least Ken Banta about the  
21 agreement, correct?

22 A Certainly not at this time.

23 Q Later on?

24 A Later. Later, yes, right.

25 Q Right. And because Ken Banta and you were at the same

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1 meeting, correct?

2 A In February '14.

3 Q Okay. And when you -- and he discussed the consulting  
4 agreement with you, correct?

5 A Yes. Asking if it's been brought to the board for  
6 approval and been approved.

7 Q And when you met him in February of 2014, what was he  
8 doing?

9 A He was supporting the -- supporting Martin.

10 Q Did you think he was doing that for free?

11 A I knew he had a previous agreement that predated, because  
12 Ken had been involved with Martin for many years, so I didn't  
13 know if there was a, you know, an interim agreement that that  
14 was party to, and this one was the revised one.

15 Q But you knew he was working, he was working on behalf of  
16 Martin, right?

17 A Yes.

18 Q And Martin was new at the company at the time?

19 A A CEO.

20 Q Okay. So he was working directly for the benefit of the  
21 CEO, correct?

22 A Yes.

23 Q And you knew also that some months earlier you had gotten  
24 that consulting agreement for that same person, correct?

25 A Yes.



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1 Q Now, at this point, you're saying that you received these  
2 two agreements, you just didn't take official board action on  
3 them, correct?

4 A No. And I do recall that I actually, as I said, I took a  
5 cursory look at them the best I could in the available time,  
6 and I made a couple of notes on my own agenda, questions  
7 really to raise about them.

8 Q Okay. And looking at the agenda, that is Government  
9 Exhibit 122-49. It's already in evidence. And you see there  
10 it's agenda item number 9, correct?

11 A Yes.

12 Q All right. And it references Exhibits I and J.

13 You see that, right?

14 A Yes.

15 Q Okay. And now switching back to 122-48, which is the  
16 original email at 4:32 p.m. from Marc Panoff, to you and  
17 others, you see that Exhibit I is the Geller consulting  
18 agreement, right?

19 A Yes.

20 Q And that Exhibit J is the consulting agreement for Banta,  
21 correct?

22 A Yes.

23 Q All right. So they correspond. What's in the agenda is  
24 exactly the same exhibit numbers what Panoff had sent you,  
25 correct?

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1 A Yes.

2 Q All right. So Martin wasn't trying to sneak this by you;  
3 fair to say?

4 MS. KASULIS: Objection.

5 THE COURT: Sustained.

6 Q Did you feel like someone was trying to sneak this past  
7 you?

8 A No. Not at this point because they were going to come  
9 back to us for discussion.

10 Q You were being told flat out that these consulting  
11 agreements has to be considered by the board, right?

12 A Yes. Asked to be considered, yes.

13 Q Right. So it was sent to you, right?

14 You have to answer, "yes".

15 A Oh, yes. Excuse me.

16 Q It was specifically on the agenda item, correct?

17 A Yes.

18 Q Okay. And you knew later, when you saw Ken Banta, at  
19 least, that he was actually working, correct?

20 A Yes.

21 Q Now, there was a later email the same day from Marc  
22 Panoff, correct?

23 I'll show it to you. It's in evidence as 122-50.

24 122-50 is an email from Marc Panoff to you, to Steve  
25 Aselage, to Martin Shkreli with copies to Evan Greebel Ed

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1 Hackert and Sunil Jain.

2 Do you see that?

3 A Yes.

4 Q Okay. And here there's a number of attachments that is  
5 being indicated from the email, correct?

6 A Yes.

7 Q All right. There's the latest draft of the amended 10-K.

8 Do you see that?

9 A Yes.

10 Q Okay, what's a 10-K?

11 A It's a legal requirement which basically supports the  
12 financial reports of the company laying out more details  
13 behind their results.

14 Q Okay. And are they publicly filed?

15 A Publicly filed, yes.

16 Q With the SEC?

17 A Yes.

18 Q On the SEC's website?

19 A Yes.

20 Q Okay. Sort of a critical document, public filing  
21 document of the company?

22 A Yes.

23 Q All right. And it says the latest draft of the amended  
24 10Q from March 31st, 2013.

25 Do you see that there?

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1 A Yes.

2 Q Okay. And what's a 10Q?

3 A It's just -- it's the quarterly version. It's the need  
4 to do this quarterly, and then "K," meaning annually.

5 Q Okay. And then it may be Marcum, LLP's audit communication  
6 letter for the quarter ended June 30th, 2013, correct?

7 A Yes.

8 Q All right. And then there's also a draft 10Q for the  
9 quarter ending June 30th, 2013.

10 Do you see that there, too?

11 A Yes.

12 Q Okay. Now, as part of that same exhibit -- so I'm not  
13 sure where it would be in your book, but it's in that same  
14 exhibit.

15 MS. KASULIS: It's tab 56.

16 Q Tab 56. There's a 10Q. There's a 10Q and an amended  
17 10QA.

18 A Yes.

19 Q Do you see that there?

20 A Yes.

21 Q I'm going to ask if you could go to page 9 of that  
22 document. It's already in evidence.

23 MS. KASULIS: Is there a Bates number on this?

24 MR. AGNIFILIO: The Bates number is 19377.

25 MS. KASULIS: Thank you.

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1 A 377.

2 Q Yes. 19377. Tell me when you're there.

3 Now, I'm going to ask you to go to page 9, I'll put  
4 it up, the highlighting is mine, but the document's the  
5 original.

6 Looking at the highlighted part, and I'll read it to  
7 you, you tell me if I read it correctly. And I'm about one  
8 third of the way down and it says: In the second quarter of  
9 2013, the company, its chief executive officer, and related  
10 party, became party to a series of agreements to settle up to  
11 2,286,511 of liabilities, which company management believes  
12 are the primary obligation of the related party.

13 Do you see that there?

14 A Yes.

15 Q The company and related party have entered into an  
16 indemnification agreement, whereby related party has agreed to  
17 defend and hold the company harmless against all such  
18 obligations and amounts, whether paid or unpaid, arising from  
19 these agreements.

20 Do you see that?

21 A Yes.

22 Q Do you know what agreement they're talking about?

23 A Not these agreements, no.

24 Q Do you have an understanding of what is in this document?

25 A I have an understanding of what sits behind -- what this

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1 is referring to, but I haven't seen specific agreements, is  
2 the only point I want to clarify.

3 Q Okay. And what's your understanding of what it refers  
4 to?

5 A It refers to the monies being paid to MSMB investors who  
6 move their money over to Retrophin that Martin is talking up,  
7 if you like, making them whole of what they should have got.

8 Q And you understand that there were settlement agreements?

9 A No.

10 Q You never saw the settlement agreements?

11 A We never saw the settlement agreements.

12 Q Do you know if the settlement agreements were included in  
13 the form S1, registration statements for Retrophin?

14 A I can't -- I can't recall.

15 Q And do you know what a form S1 registration statement is?

16 A It is about clarifying someone's stock holding.

17 Q I'm not sure it's in your book, what I'm going to do, if  
18 it's okay -- actually, I'm going to move this into evidence,  
19 Judge, it Defendant's Exhibit 4237.

20 MS. KASULIS: No objection.

21 THE COURT: We received Defendant's Exhibit 4237.

22 (Defendant's Exhibit 4237, was received in  
23 evidence.)

24 Q And I'm just going to ask, if I could, Judge, I'm just  
25 going to approach the witness, I think it will be quicker.

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1 THE COURT: Well, step away when you speak to the  
2 witness.

3 MR. AGNIFILIO: I will, yes, Judge.

4 THE COURT: All right.

5 Q Sir, I'm just going to put something in front of you and  
6 I'm just going to have you read it for a second and then I'll  
7 step back.

8 And before -- well, take a chance and read it.

9 (Whereupon, the witness is reviewing the document.)

10 THE COURT: Are you directing him to a specific  
11 page, sir?

12 MR. AGNIFILIO: Yes, it's a page that says 1 of 6 in  
13 the back, but there's not like a hard page number and there's  
14 no Bates number.

15 Q And just so we're clear, can you tell us what that  
16 document is?

17 A The document is the Retrophin, Inc. form S1 date -- I  
18 don't see a date.

19 Q It's for the year 2013, though, correct?

20 A It says, as filed, November 15th, 2013. Not the whole  
21 year.

22 Q Right.

23 A Right.

24 Q So now within that document, and I apologize, the page  
25 doesn't have a page number on it, but what does -- what does

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1 that page read?

2 You know what I'll do, I'll put it up. I'll make it  
3 easier, let me take it back and I'll put it up. You can see  
4 it on the screen.

5 Thank you, sir.

6 THE COURT: Let's just describe what it is for the  
7 record, please.

8 MR. AGNIFILIO: Yes.

9 THE COURT: If they don't -- do you not have a copy?

10 MS. KASULIS: We have one but the witness doesn't  
11 have a full copy, so we just asked if there was an extra one.

12 THE COURT: Does the defense have a full copy?

13 Q Do you see the page, okay?

14 A Yes.

15 Q So on the bottom, just so we're clear, on the bottom it  
16 says?

17 MS. SMITH: Your Honor, just for the record this is  
18 Exhibit 10.12 is the filing.

19 MR. AGNIFILIO: There's a legend on the bottom. I'm  
20 trying to pull it up to see. That will be Exhibit 10-12 of  
21 the S1 filing.

22 Q And then the rest of the page it says: Settlement and  
23 release agreement. And then it goes on to say, tell me if I  
24 read this right, the settlement and release agreement, the  
25 agreement, is made and entered into as of -- the date is kept



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1 blank, by and among the releasor, Martin Shkreli, Shkreli,  
2 MSMB Capital, LP; MSMB Capital, a Delaware limited  
3 partnership; MSMB Healthcare -- I'm sorry, MSMB Capital  
4 Management, LLC; MSMB Capital, LLC, a Delaware limited  
5 liability company; a number of MSMB entities and Retrophin,  
6 Inc., a Delaware corporation, releasor, Shkreli --

7 THE COURT: Sir, use the microphone, sir. I just  
8 can't hear you.

9 MR. AGNIFILIO: Yes.

10 Q All of the releasors, Retrophin and the MSMB entities,  
11 referred to as the parties, it says, whereas Shkreli is the  
12 managing member of MSMB Capital, LLC, MSMB Investors  
13 MSMB Management; whereas MSMB Investment is the general  
14 partner of MSMB Healthcare; whereas MSMB Capital, LLC is the  
15 general partner of MSMB Capital LP; whereas Shkreli is the  
16 president and chief executive officer of Retrophin; and  
17 whereas the parties are entering into this agreement in order  
18 to settle and compromise fully and finally, any and all  
19 presently existing or future disputes and claims, the release  
20 they may have against Shkreli, Retrophin, and any of the MSMB  
21 entities or their respective affiliates.

22 Do you see that there?

23 A Yes.

24 Q Okay. And fair to say -- and that's part of the first --  
25 I'm not going to read the whole document, that's part of the

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1 first page, correct?

2 A Yes.

3 Q All right. And then there's a second page, which I'm not  
4 going to read, but the document continues, correct?

5 A Yes.

6 Q All right. And there's a third page, which I'm not going  
7 to read, but the document continues, correct?

8 A Yes.

9 Q There's a fourth page, which I'm not going to read. The  
10 document continued, right?

11 A Yes.

12 Q And then there's a fifth page, that I'm not going to read  
13 but, the document it continues, correct?

14 A Yes.

15 Q All right. And then there's a signature page, right?

16 A Yes.

17 Q Okay. And this is all included in a public filing on  
18 behalf of Retrophin, correct?

19 A I don't recall this section at all, but...

20 Q Do you have any doubt that this was included as part of  
21 the S1 public filing with the SEC?

22 A No, it's not a public filing, it must be in there. It's  
23 not something that I have recall on.

24 Q No, I understand you don't recall it, but -- but this is  
25 all part of the S1 Retrophin filing with the SEC?

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1 A Right.

2 Q So the exact settlement agreements, the form of the  
3 settlement agreements, was publicly file?

4 MS. KASULIS: Objection.

5 THE COURT: Sustained.

6 Q What I just read to you, what we just read, says the  
7 settlement and release agreement is part of a public filing on  
8 behalf of Retrophin, correct?

9 A But it doesn't change that we, the board, never received  
10 settlement agreements to review and approve.

11 Q No, I'm not -- that's not the question.

12 The question is that -- is that this is a public  
13 filing, right, for Retrophin, correct?

14 A Yes.

15 Q And you're on the board of directors, correct?

16 A Yes.

17 Q And you're telling me you didn't read this?

18 A I'm sure I read through whatever I can of the S1.

19 Q The S1 is an important public filing, correct?

20 A Yes. But, again, I don't recall this specific section.

21 Q So you might have read it and forgot; it is what you're  
22 saying?

23 A I just don't recall it.

24 Q But you think you read it?

25 A If the draft was sent to us for approval, I would have

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1 read it.

2 Q It's also on the SEC website to read publicly-filed  
3 documents by the company that you're on the board of, correct?

4 A I could do, but obviously being on the board, I'd expect  
5 to see them before their publicly disclosed.

6 Q And you're -- and you don't have a recollection as to  
7 whether you read this or not?

8 A I'm sure I looked at draft S1, but I have no recollection  
9 of this particular section.

10 Q Now, we're going to go to a November 6th, 2013 email from  
11 Panoff to you and others. It's Government Exhibit 122-53.

12 You can see it on the screen, we can do it that way.

13 A Okay.

14 Q All right. It's from Marc Panoff, it's to Neal Golding;  
15 is that right?

16 A Yes, who is now on the board; yes.

17 Q To you?

18 A Yes.

19 Q To Mr. Aselage, to Martin Shkreli, with copies to  
20 Mr. Greebel, Mr. Hackert and Sunil Jain, correct?

21 A Yes.

22 Q All right. And there is -- there are number of things  
23 attached here, correct?

24 A Yes.

25 Q All right. There's a telephone board meeting agenda,

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1 correct?

2 A Yes.

3 Q There is a Marcum, LLP audit communication letter for  
4 September 30th, 2013, correct?

5 A Yes.

6 Q All right. And there are other things attached here,  
7 correct?

8 A Yes.

9 Q Including the Martin Shkreli employment agreement,  
10 correct?

11 A Yes.

12 Q Did you have a hand in drafting the Shkreli employment  
13 agreement?

14 A No.

15 Q You had no role in drafting it?

16 A No.

17 Q Do you know that if it called that said he can only be  
18 discharged if he was convicted of a felony? Do you remember  
19 that provision?

20 A I missed that when it was circulated here, but I picked  
21 it up in February of '14 when I got a second copy of the  
22 agreement.

23 Q Okay. So did you know it at some point?

24 A In February of '14.

25 Q Okay. Now, in regard to this particular email, it

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1 attached the letter from Martin, correct?

2 A Yes, the external auditors.

3 Q And what do external auditors do?

4 A They're really reviewing all the books, reviewing all of  
5 the financial results to make sure that -- that -- and they  
6 can flesh out any concerns I have, any inconsistencies so they  
7 can report that back to the management.

8 Q All right. And this is the first page of the Marcum  
9 letter, it's a November 8, 2013 letter to Retrophin, correct?

10 A Yes.

11 Q And we're going to look at the third page.

12 MS. KASULIS: This is Tab 57 for the record.

13 MR. AGNIFILIO: Tab 57.

14 Q And the third page is 8717 on the number.

15 A Okay.

16 Q Do you see that now okay?

17 A Yes.

18 Q Okay. So here, on November 8th, the day of the Marcum  
19 letter, the external auditors have a section there saying,  
20 accounting for full exposure of settlement agreement.

21 Do you see that there?

22 A Yes.

23 Q Okay. And I'm just going to read it, and you just tell  
24 me if I read it correctly.

25 During the quarter ending June 30th, 2013, the

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1 company, its chief executive officer, and MSMB Capital, MSMB,  
2 became parties to a series of agreements to settle up to  
3 \$2,286,511 of liabilities, which company management believes  
4 are the primary obligation of MSMB.

5 Do you see that there?

6 A Yes.

7 Q Okay. And then under it there's another small paragraph  
8 that says: In August 2013, the company entered an additional  
9 settlement agreement for \$300,000 and made payment on  
10 August 29th, 2013, to settle such agreement.

11 Do you see that?

12 A I see that.

13 Q Okay. Did you take any action after reading this on or  
14 about November 8th, 2013?

15 A No, the action I had taken was earlier with Marc Panoff  
16 to be comfortable with the promissory note that Martin and  
17 MSMB had signed behind these agreements was being actioned.

18 Q But by this point you're being told by the auditor that  
19 there's over \$2 million in liability, correct?

20 A Yes, but with promissory notes behind them. Holding the  
21 company whole.

22 (Continues on following page.)  
23  
24  
25

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1 Q And do you know if Steve Aselage told Martin not to worry  
2 about the promissory note?

3 MS. KASULIS: Objection.

4 THE COURT: Sustained. Sustained.

5 Q Did you ever have a conversation with Steve Aselage about  
6 the promissory notes?

7 A No.

8 Q Never?

9 A No.

10 Q Did you ever have conversation with Martin about the  
11 promissory notes?

12 A No. Only Marc Panoff.

13 Q And did you and Steve Aselage ever discuss the settlement  
14 agreements at all?

15 A Only in the context of the board, any board discussion  
16 that we wanted to make sure, obviously, they're fulfilled.

17 Q And you understand that the company is picking these up  
18 as liabilities, correct?

19 A Initially.

20 Q These are appearing as liabilities in Retrophin's public  
21 filings, correct?

22 A Yes. But with a promissory note from MSMB and Martin to  
23 make the company whole.

24 Q But you understand that in terms of the auditor here,  
25 correct, they are considering this a liability of Retrophin,



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1 fair to say?

2 A At that point in time.

3 Q And so you -- fair to say, you as a board member --

4 THE COURT: I'm sorry. Did you say it was a  
5 liability of Retrophin or MSMB?

6 MR. AGNIFILO: No, a liability of Retrophin. A  
7 liability of Retrophin.

8 Q You understood that it was on the books of Retrophin as a  
9 liability of Retrophin, fair to say, at this point in time?

10 A Yes, but with recognition of the promissory note again.

11 Q And you were aware at this point in time of the  
12 settlement agreement, correct?

13 A We were aware of the settlement. The subject had been  
14 moved. We weren't aware of the specific settlement  
15 agreements. None had been brought to us.

16 Q Well, two consulting agreements were sent to you,  
17 correct?

18 A That's a very different, settlement agreements.

19 Q No. No. I understand. But you understood that there  
20 were settlement agreements that were being reached, correct?

21 A Between Martin, MSMB and certain investors.

22 Q And Retrophin. These are on Retrophin books as  
23 liabilities, yes or no?

24 A At this point in time, yes.

25 Q Now, I think you also talked in direct examination about

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1 an email that is in evidence as Government's 122-43 that  
2 Panoff sent to you July 2, 2013. It's Martin Shkreli, Steve  
3 Aselage, Richardson, Greebel concerning a board call.

4 Do you see that?

5 A Yes.

6 Q And in connection with this email you also had in  
7 evidence and I think you looked at a Retrophin incorporated  
8 summary cash flow for the six months ended June 30, 2013.

9 Do you see that there?

10 MS. KASULIS: It's tab 53 of your binder.

11 A Yes. Thank you.

12 Q And I think you said on direct examination, correct me if  
13 I'm wrong, that toward the bottom there there's an entry that  
14 says MSMB's settlements, Spencer Spielberg.

15 MS. KASULIS: Your Honor, can I just object to all  
16 the -- the version with counsel's writing on it.

17 THE COURT: I don't know whose writing that is.

18 MR. AGNIFILO: It's mine.

19 THE COURT: The government has a clean copy. Do you  
20 want to put that one up?

21 MR. AGNIFILO: I think I got rid of it.

22 I'm all about efficiency. Okay.

23 Q Toward the bottom there it says MSMB settlement, Spencer  
24 Spielberg, Sarah Hassan, Trachtenberg & Rodes. Do you see  
25 that there?

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1 THE COURT: You might need to move the document.

2 A Yeah, move the -- I have it on my hard copy. Yeah.

3 Q Can you see it okay?

4 A Yes.

5 Q There we go. All right. And the sum is 548,711,  
6 correct?

7 A Yes.

8 Q And I think your testimony on direct is you don't recall  
9 seeing this?

10 A No. I think I said I recalled seeing it. I said that  
11 there wasn't any discussion about it.

12 Q Well, you saw it. What did you think it was?

13 A Well, again, I go back to counsel to what I said before  
14 is, you know, I was aware that settlements were being  
15 processed, but they were being backed up by the promissory  
16 note so that the company was being made whole at some point in  
17 time.

18 Q But this is being captured as an expense, correct?

19 A Yes.

20 Q An expense of Retrophin, right?

21 A Yes.

22 Q And it's an expense that's in excess of a half a million  
23 dollars, correct?

24 A Yes.

25 Q And it's right there in a financial report that's given

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1 to you in your capacity as a board member, correct?

2 A Yes.

3 Q And you're saying you saw it, but you didn't think much  
4 about it?

5 A No. I spoke to the new CFO at this point, Marc Panoff.  
6 I spoke to him both here and in September, and he said as long  
7 as Martin and MSMB stand by the promissory note, the company  
8 will be made whole. So I was a board of directors. I'm  
9 comfortable with that coming from my CFO.

10 Q Did you speak to Martin about it?

11 A I didn't speak to Martin about it, no. Not specifically  
12 I didn't.

13 Q You never raised this with Martin?

14 A Not as a specific discussion point.

15 Q Is there a reason why you didn't raise it with Martin?

16 A No. I had raised it with Marc and I felt that was  
17 adequate.

18 Q I mean, here's a \$548,000 plus liability to Retrophin.  
19 You're given an explanation from someone other than Martin  
20 that Martin is going to pay it, and you don't confront Martin  
21 about it?

22 A Well, no, but remember, counsel, what I said in my direct  
23 is I'd spoken to Martin in March of that year and he'd already  
24 told me specifically he was going to take from his personal  
25 stock to top me up and the other investors. So the angle I

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1 had from Martin was he said to me all the way back in March,  
2 I, Martin, am making each of you good again from my personal  
3 stockholding so I didn't need to go back to him because that  
4 was my frame of reference.

5 Q But if Martin was going to use his personal stock, why is  
6 it on a Retrophin financial document?

7 A That was part of what he must have, you know, arranged.  
8 Because we never saw the agreements, I didn't see the  
9 agreements, maybe someone wanted cash. I don't know what the  
10 outcome was. My frame of reference was Martin was making them  
11 whole and the promissory note confirmed that to me as a board  
12 member and that I took as adequate. And then I'd spoke to the  
13 CFO about it who also confirmed the same thing. So I had all  
14 the reassurances I felt I needed as a board member.

15 Q But you will agree with me that this financial report  
16 doesn't say anything along those lines, correct?

17 A The --

18 Q Go ahead. Yes?

19 A But the audit letter says, it refers to the promissory  
20 notes. If you pull up some other audit letters, you'll see it  
21 refers specifically to the promissory notes that make the  
22 company good.

23 Q Then at a minimum there are inconsistencies within the  
24 recordkeeping of Retrophin, is that fair to say?

25 MS. KASULIS: Objection.

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1 THE COURT: Sustained.

2 Q Do you see this document as consistent with -- let me ask  
3 you a different question.

4 This document doesn't indicate that anybody other  
5 than Retrophin is paying this bill, correct?

6 A On this one page, yes.

7 Q Yes. This one page is a Retrophin liability to the tune  
8 of \$548,000 plus, correct?

9 A Yes.

10 Q And you never at any time after receiving this  
11 information had a conversation with Mr. Shkreli about this?

12 A Not that I remember specifically, no.

13 Q But wouldn't that have been important to do to understand  
14 what the overall situation was? Wouldn't you want to speak to  
15 Martin directly about it?

16 MS. KASULIS: Objection.

17 THE COURT: Mr. Agnifilo, this is the third or  
18 fourth time you have asked the question so I'm going to  
19 sustain the objection.

20 MR. AGNIFILO: No, I know he didn't, but I want to  
21 ask him why he didn't.

22 A Again, because I had the reassurances from Martin and  
23 then the promissory note was reconfirming that. And then  
24 going forward the audit letter again, you know, said there  
25 were no lingering issues.

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1 Q Now, at one point you're saying that Martin never paid  
2 this debt back, correct?

3 MS. KASULIS: Objection as to this debt. I don't  
4 know.

5 Q Did Martin ever pay the \$548,000?

6 A I understood he was paying some of it. I don't know at  
7 what point and how much was paid.

8 Q How was he paying it back?

9 MS. KASULIS: Objection.

10 THE COURT: All right.

11 A I wasn't party to that.

12 THE COURT: If you know.

13 Do you know?

14 THE WITNESS: No, I wasn't party to it.

15 Q You don't know?

16 A No.

17 Q But you'll agree with me that none of this was cited in  
18 the reasons that Martin was let go as CEO, correct?

19 A That's correct.

20 Q Part of the concern that the board had with Martin toward  
21 the end of his time as the CEO is that he was tweeting,  
22 correct?

23 A Yes, his use of Twitter.

24 Q And the board had talked to him about using Twitter, and  
25 he kept using Twitter, right?

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1 A Yeah. We talked to him. It was me specifically and Jeff  
2 Paley numerous times.

3 Q And despite that it was bad for him, he kept using  
4 Twitter?

5 A No. I agreed with him, as you heard in direct that, you  
6 know, again, he was a younger profile CEO. There is an  
7 appropriate way, but he needed to tell us how he wanted to use  
8 it.

9 Q And what do you think the excuse is for Donald Trump?  
10 He's not a younger CEO.

11 MS. KASULIS: Objection.

12 THE COURT: Sustained. Sustained.

13 MR. AGNIFILO: Withdrawn.

14 THE COURT: Just disregard these gratuitous  
15 remarks. They are completely irrelevant and inappropriate.  
16 All right.

17 MR. AGNIFILO: I apologize.

18 Q But this was of great concern to the board, the tweeting?

19 A Not tweeting as a total, but certain types of tweets that  
20 he was making that could be, you know, could be suggesting he  
21 was somehow sharing company information.

22 Q Understood. Now, you talked a lot on your direct and  
23 cross examination about Evan Greebel, correct?

24 A Yes.

25 Q Evan Greebel is a partner at Katten Muchin Rosenman,



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1 correct?

2 A Yes, which was -- we had -- he was our external counsel.

3 Q And I think you said he's external counsel, but he was  
4 present for the board meetings, correct?

5 A Yes.

6 Q And I think you said that you assumed he was taking notes  
7 during the meetings, correct?

8 A Yes, because I was only physically with him once or  
9 twice. So, yes, I assumed he was taking the minutes.

10 Q Right. Because he was the secretary of the board?

11 A Yes.

12 Q And he was also someone that was on a great amount of the  
13 email traffic that would go on within Retrophin?

14 A Yes, he was copied on virtually everything.

15 Q On virtually everything, right?

16 A Yes.

17 Q And his job is to provide sound legal advice, fair to  
18 say?

19 A Yes.

20 Q And he was involved in the capitalization tables,  
21 correct?

22 A Yes.

23 Q He was involved in the information that was given to  
24 board members in preparation for the meetings, correct?

25 A Yes.

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1 Q And he was copied on all of those emails?

2 A Yes.

3 Q Martin, very often, would, if a legal question came his  
4 way, would say he had to speak to Evan, fair to say?

5 MS. KASULIS: Objection.

6 THE COURT: Sustained.

7 Q Did Martin ever refer legal questions to Evan in your  
8 experience?

9 A I certainly saw a few referrals, yes, that either through  
10 email or.

11 Q And in conversations with Martin, would Martin say to you  
12 that I need to run this past Evan?

13 A I think one or two specific instances he probably did,  
14 yes.

15 Q Do you remember what those were?

16 A Well, certainly, again, in terms of my own, my own  
17 topping up of my own stock, that was one area that he said I  
18 have to get back to Evan on.

19 Q Because he wanted to be appropriate, correct?

20 A Yes.

21 Q And, to your knowledge, did he speak with Evan about it?

22 A Only -- through the email exchange Evan was copied. I  
23 don't know if he spoke to him.

24 Q And you've met Evan a number of times, correct?

25 A Yes.

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1 Q I think at one point Martin introduced you at some point  
2 in 2012 or so. Does that sound about right?

3 A I only recall meeting him for the first time in 2013, but  
4 I may have met him in the office. 2013 is the first  
5 recollection I had of meeting him.

6 Q Do you have any recollection of Martin, you and Evan ever  
7 having dinner beyond a social situation?

8 A The board dinners.

9 Q That's it?

10 A Yeah, the board dinners.

11 (Continued on the following page.)  
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RICHARDSON - CROSS - AGNIFILIO

1 Q When Martin introduced you to Evan he said this is going  
2 to be essentially the company's counsel, correct?

3

4 A Well, he, he didn't say that. I already met him  
5 electronically, if you would. Like, I already know the role  
6 before. I don't believe Martin ever said that, he knew I knew  
7 what Evan's context was.

8 Q At one point Martin asked you to go down to the  
9 Securities Exchange Commission, right?

10 A Yes.

11 Q Tell us what he told you in preparation for your  
12 interview there?

13 A He had said this complaint has been triggered by a  
14 disgruntled employee. There is no substance to it. It would  
15 really help if there was one of the investors in MSMB Capital  
16 could answer go and speak to them because I think that would  
17 immediately close down this complaint.

18 Q Do you know who Jackson Su is?

19 A Yes, he was on the Retrophin team I believe in 2011,  
20 2012.

21 Q Do you know if he made a complaint with the SEC? Only if  
22 you know.

23 A No.

24 Q You did go down to the SEC, correct?

25 A Yes.

RICHARDSON - CROSS - AGNIFILIO

1 Q And you told the SEC that you were happy with your  
2 investment in MSMB; fair to say?

3 A Yes.

4 Q And you told the SEC that you would invest with Martin  
5 Shkreli again, if given the opportunity?

6 A Yes.

7 Q And you meant that at the time, right?

8 A At the time, yes.

9 Q The \$1.9 million that you hold in Retrophin shares from  
10 the stock conversion, how much money did you put into MSMB?

11 A Into MSMB I put \$400,000 in.

12 Q And your total now is 1.9 million?

13 A Yes.

14 Q That's a good investment; fair to say?

15 A Yes.

16 Q Now yesterday you described a situation between you and  
17 Martin in your apartment, do you remember telling the jury  
18 about that?

19 A Yes.

20 Q Were you being fully accurate?

21 A Yes.

22 Q Yes?

23 A Yes.

24 Q You and Martin did not have a physical relationship?

25 A No.

S. RICHARDSON - REDIRECT - KASULIS

1 Q Do you remember telling him at one point, "I'm drunk,  
2 where are you"?

3 A I don't recall that.

4 Q I'm going to show you an e-mail, Defendant's Exhibit  
5 4223, an e-mail from you to Martin, March 29, 2010, 9:55 p.m.

6 A I don't recall it, but I'm reading it now.

7 Q Did you write to him, "Martin, I'm drunk. Where are  
8 you?"

9 MS. KASULIS: Objection.

10 THE COURT: Overruled. You can answer the question.

11 A It's from my e-mail. It's on here.

12 Q Did you send it?

13 A I must have, but I don't have any recall of it.

14 Q Thank you, Mr. Richardson?

15 MR. AGNIFILO: Thank you. No further questions at  
16 this point.

17 THE COURT: Any redirect of this witness?

18 MS. KASULIS: Briefly, your Honor.

19 REDIRECT EXAMINATION

20 BY MS. KASULIS:

21 Q Mr. Richardson, earlier in cross-examination there had  
22 been some discussion about touching soft skin, do you recall  
23 that?

24 A Yes.

25 Q You made some reference to some sort of a neck

S. RICHARDSON - REDIRECT - KASULIS

1 infection --

2 A Yes.

3 Q -- that the defendant had?

4 A Yes.

5 Q I'm showing you what's been marked for identification as  
6 Government's Exhibit 122-99. I have copies here.

7 Do you recall when you were speaking earlier, when  
8 you were speaking with Mr. Agnifilo that the touching the soft  
9 skin reference was in the March 29, 2010, end of March 2010  
10 time period. Do you recall that Mr. Richardson?

11 A Yes.

12 Q So Government's Exhibit 122-99, do you recognize this  
13 e-mail?

14 A Yes.

15 Q What is it?

16 A An e-mail from Martin to me.

17 Q What is the date on it?

18 A April 13, 2010.

19 MS. KASULIS: Government moves this exhibit into  
20 evidence.

21 MR. AGNIFILO: No objection.

22 THE COURT: We will receive Government's Exhibit  
23 122-99.

24 (Government Exhibit 122-99, was received in  
25 evidence.)

S. RICHARDSON - RECROSS - AGNIFILO

1 Q So the date on this e-mail is April 13, 2010; is that  
2 right?

3 A Yes.

4 Q And it's from Mr. Shkreli to yourself; is that right?

5 A Yes.

6 Q The subject is, "the skin around my neck is all better."  
7 Do you see that?

8 A Yes.

9 Q Is that a reference, is that another reference to the  
10 neck infection that you were testifying about earlier?

11 A Yes.

12 MS. KASULIS: No further questions.

13 RECROSS-EXAMINATION

14 BY MR. AGNIFILO:

15 Q You remember clearly there is reference to a neck  
16 infection, that this e-mail, you're saying you remember this  
17 e-mail? Is that what you're saying?

18 A It says, "the skin around my neck is all better."

19 Q Do you know what he's talking about?

20 A Yes, the infection that I referred to earlier.

21 Q And had you ever touched his soft skin?

22 MS. KASULIS: Objection.

23 THE COURT: Overruled. You can answer it.

24 A Well, in terms of a hug or something like that, yes, I  
25 touched him in a hug or whatever.



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1 Q That's all?

2 A Yes.

3 MR. AGNIFILO: Nothing else. Thank you, Judge.

4 THE COURT: All right. Any redirect?

5 MS. KASULIS: No.

6 THE COURT: Mr. Richardson, you're excused. Have a  
7 nice day.

8 (Whereupon, the witness was excused.)

9 MR. SRINIVASAN: Your Honor we call David Geller to  
10 the stand.

11 (Witness takes the witness stand.)

12 DAVID GELLER, called as a witness, having been first duly  
13 sworn/affirmed, was examined and testified as follows:

14 MS. SMITH: Your Honor, I'm going to replace the  
15 binders.

16 THE COURT: Sure.

17 COURTROOM DEPUTY: State and spell your name

18 THE WITNESS: David Geller, D-A-V-I-D, G-E-L-L-E-R.

19 MR. SRINIVASAN: Your Honor, may I proceed?

20 THE COURT: Yes, please.

21 DIRECT EXAMINATION

22 BY MR. SRINIVASAN:

23 Q Good afternoon, sir. How old are you, Mr. Geller?

24 A Fifty-four.

25 Q Where do you live?

D. GELLER - DIRECT - SRINIVASAN

1 A New York City.

2 Q Which borough?

3 A Manhattan.

4 Q How long have you lived there?

5 A Probably about 20 years.

6 Q Are you married?

7 A I am.

8 Q Do you have any children?

9 A I do, I have a 12-and-a-half year old boy.

10 Q Could you please describe your educational background?

11 A I had a BS in finance from Syracuse University.

12 Q About when did you graduate?

13 A 1984.

14 Q Could you please describe your professional background  
15 after college?

16 A After college I was, I had a couple of odd jobs, amongst  
17 a salesman for six months. Then I became an assistant trader  
18 at Shearson Lehman Brothers.

19 Q What is Shearson Lehman Brothers?

20 A A large brokerage firm that doesn't exist any longer.

21 Q How long were you at Shearson Lehman?

22 A Five years.

23 Q What did you do after that?

24 A After that I continued in the industry. I had a few  
25 different jobs, same industry. I assisted some law traders

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1 and then I traded on my own.

2 Q When you say trading, what do you mean?

3 A Just pretty much speculating buying and selling, buying  
4 low, selling high.

5 Q Any particular kinds of things that you were trading?

6 A Just basic equities, nothing in particular.

7 Q Since about 2011 or so, what have you done?

8 A In 2011 I was still trading. I think I maybe took a  
9 break in 2012 for a couple of years. Market has been getting  
10 a lot harder with the computer derivatives and black boxes,  
11 all that kind of stuff. And in the last year-and-a-half I  
12 took on trading part-time again.

13 Q Do you know an individual named Martin Shkreli?

14 A I do.

15 Q Have you met him in person?

16 A I have.

17 Q How do you know him?

18 A I was introduced to him a while ago and I became an  
19 investor in his fund.

20 Q Who were you introduced by?

21 A My brother, Alan.

22 Q About when was your first contact with Martin Shkreli?

23 A In the beginning of 2011.

24 Q Do you see Martin Shkreli in the courtroom today?

25 A I do.

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1 Q Can you point him out and pick out --

2 A Sitting over there, to the right.

3 MR. BRAFMAN: We'll stipulate to the identification.

4 A He's wearing a collared shirt, pink or white.

5 THE COURT: We will note that Mr. Geller has  
6 identified Mr. Shkreli.

7 MR. SRINIVASAN: Thank you, your Honor.

8 Q How did you first contact him, by phone in person?

9 A By phone.

10 Q Why did you speak to him?

11 A I spoke to him because I just wanted to feel him out a  
12 little.

13 Q Feel him out in terms of what?

14 A See a little about his background. I wanted to hear him  
15 talk about his investing style. And I just wanted to see what  
16 type of strategy he used. And I guess lastly, to try to get a  
17 feel of what type of guy he was.

18 Q Was he running any kind of company at that time or fund?

19 A Repeat it?

20 Q Was he running any company or fund at the time?

21 A Yes, he was.

22 Q What was that?

23 A MSMB Healthcare.

24 Q Did you discuss MSMB Healthcare with him?

25 A We did.

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1 Q What did he tell you about MSMB Healthcare?

2 A He said it was a long/short balanced fund that invested  
3 primarily in health care securities.

4 Q When you say long/short, what did that mean?

5 A That meant at any one time he, in his position, balances  
6 he had to have a certain amount of shorts or longs or setting  
7 the shorts or longs.

8 THE COURT: Can I ask you to push the mic a little I  
9 away. You're a little too close. Push the base away. Thank  
10 you.

11 Q Did he say anything about the liquidity in the fund?

12 A He did. He said it was a very liquid fund.

13 Q What did that mean to you?

14 A That meant that if an investor wanted to cash out or take  
15 part of his cash out, it would be simple.

16 Q Did this information make any impression on you with  
17 respect to MSMB Healthcare?

18 A It did.

19 Q What was that?

20 A It fit my objectives at the time. Because I was looking  
21 for a fund such as that. I just wanted a liquid fund. Low  
22 volatility, balance.

23 Q Had you invested in any hedge funds before this?

24 A I did.

25 Q What was your prior experience with investing in hedge

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1 funds?

2 A My prior experience unfortunately was not too good.

3 Because I invested a big portion of my money in 2006, 2007 and

4 that, as you know, was right before the stock market crashed.

5 So a lot of the investments I had were illiquid and they were

6 they were hedge funds that required 120 days written notice.

7 And one of them was, I invested with a friend, and

8 they invested in pipes which are similar to like a secondary

9 investments, and that fund lost 90 percent. The big hedge

10 funds, I had didn't do too well.

11 Q Mr. Geller, just so the record is clear, you say that

12 your investments were liquid or illiquid?

13 A Illiquid, a lot of them. Some were liquid but a decent

14 portion that was illiquid.

15 Q Did that experience have any effect on how you evaluated

16 hedge fund investments going forward?

17 A Absolutely.

18 Q How so?

19 A The next, if I invested again, the next investment I

20 wanted to make was going to be a fund that I could recoup any

21 cash, if I wanted to cash out, on my terms not anyone else's

22 terms.

23 Q You mentioned a second ago you were trying to get a sense

24 of the defendant, did he describe his background to you?

25 A He told me that, what impressed me was he worked for Jim

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1 Cramer. And at the time, Jim Cramer was a rising. He's on  
2 CNBC now. He was a rising star in the brokerage industry.  
3 That impressed me pretty much.

4 Q Did the name Elea Capital come up in your conversations  
5 with the defendant?

6 MR. BRAFMAN: Objection, your Honor?

7 A No.

8 MR. BRAFMAN: Move to strike, your Honor.

9 THE COURT: We will -- I'm going to overrule the  
10 objection.

11 MR. BRAFMAN: Your Honor, could we have a quick  
12 sidebar?

13 THE COURT: Yes.

14 (Continued on the next page.)

15 (Sidebar conference.)

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## SIDEBAR CONFERENCE

1 MR. BRAFMAN: Your Honor, we have a witness that  
2 testified to what the defendant told him. He said, "I was  
3 working at Jim Cramer." The fact that he had previously  
4 worked for Elea Capital is not spoken about either in a good  
5 way or a bad way. If he said, "I worked at Elea Capital and I  
6 did great there," that would be an affirmative  
7 misrepresentation. I don't think every time you pitch  
8 yourself to a prospective investor you need to tell them  
9 everything in your career that may be good or bad. It's what  
10 did you say, what did you rely on.

11 He was referred to this man by his brother, who is  
12 in the fund and made millions. He's referred to by Kevin  
13 Mulleady.

14 If the next question is, if he had told you that he  
15 was in Elea and Elea didn't work out, would you have wanted to  
16 know that. Those are inappropriate questions.

17 THE COURT: Were you going to move on?

18 MR. SRINIVASAN: The next question is, "If the  
19 defendant had performed well or poorly at a previous hedge  
20 fund, would that have been important to your investing," which  
21 the form of the question I think Ms. Kasulis asked yesterday.  
22 So it's not eliciting anything more than a hypothetical.

23 THE COURT: Why don't we do this. We can strike the  
24 whole Elea reference.

25 MS. SMITH: It's a fact question, not a



## SIDEBAR CONFERENCE

1 hypothetical.

2 THE COURT: When he told him --

3 MS. SMITH: You can of argue later that it's not  
4 material, but we have a right to ask.

5 MR. BRAFMAN: The next question is, if you know of  
6 that Elea didn't work out.

7 MR. SRINIVASAN: That's not what I said, "would  
8 information about whether the defendant performed well or  
9 poorly as a hedge fund manager been important to your  
10 investment," it could be anything.

11 THE COURT: It's a neutral question.

12 MR. BRAFMAN: It's not a neutral question, because  
13 this jury has heard throughout the trial, over our objection,  
14 about Elea Capital and that Elea was something that didn't  
15 perform well, because they have asked everybody about it over  
16 our objection. And now with someone who could careless, who  
17 had no clue about Elea, good or bad, made his investment on  
18 what of his brother Alan Geller told him.

19 MS. SMITH: The defense withdrew the objection to  
20 Elea Capital.

21 MR. BRAFMAN: We withdrew our objection as a -- when  
22 we were talking about motions in limine there was a question  
23 as to whether or not you could reference Elea or RBC. That  
24 doesn't mean you can do it in the way that you are using it.

25 MS. SMITH: In what way would we use it?

## SIDEBAR CONFERENCE

1 MR. BRAFMAN: This man has had no conversation with  
2 him about anything. He says he was impressed with Jim Cramer.

3 THE COURT: We established that Elea never came up.  
4 The next question is not going to Elea. If we can move  
5 forward with the question, whether or not prior performance as  
6 a hedge fund manager positive or negative would have been  
7 important to him, I think that's neutral enough.

8 If the objection was withdrawn, then the motions I  
9 think --

10 MR. BRAFMAN: Judge, we're talking about apples and  
11 oranges.

12 What we said first, if Mr. Shkreli -- if the  
13 witnesses are coming here from Elea they can testify to it.  
14 If Elea was properly mentioned because it's in many of the  
15 PPMs Elea is noted. So we withdrew our objection because Elea  
16 comes up in several of the PPMs.

17 That doesn't mean we withdraw our objection to what  
18 you ask about Elea. We've been pressing this objection since  
19 the trial started. In particular with this person we don't  
20 believe you have -- I want to make the record clear. I do not  
21 believe that someone who is pitching you to invest has an  
22 affirmative obligation to go through their entire track record  
23 every time they suggest that you should invest with them.

24 MR. SRINIVASAN: This is argument. He's entitled to  
25 argue it. In our motion initially we clearly had the grounds

## SIDEBAR CONFERENCE

1 why Elea matters in terms of its knowledge, in terms of direct  
2 evidence in this case. They withdrew their objection. The  
3 next question is neutral, not about if you learned about Elea,  
4 or if Elea bust would that have mattered to you. That's not  
5 the question.

6 MR. BRAFMAN: The next question following reference  
7 to Elea is only being asked to imply that Elea was a bad hedge  
8 fund.

9 MS. SMITH: In fact, there is other examples which  
10 may or may not come in, where the defendant performed poorly  
11 in trading. So it is a completely fair question, "if you had  
12 known if he performed poorly as a hedge fund or trader, would  
13 that have effected your decision to invest." The defendant  
14 chose not to disclose that the information. We can argue that  
15 material. We have a right to ask the questions. We have a  
16 right to ask the hypothetical questions. We have neutralized  
17 them, but we have have a right to ask those as well.

18 THE COURT: You can ask the question in the form  
19 that you're proposing the next question.

20 MR. BRAFMAN: We're not waiving our objection.

21 THE COURT: We're not striking anything.

22 (End of sidebar conference.)

23 (Continued on the next page.)  
24  
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1 (In open court.)

2 THE COURT: Please proceed.

3 BY MR. SRINIVASAN:

4 Q Mr. Geller, would information about whether the defendant  
5 had performed well or poorly as a hedge fund manager had been  
6 important to your investing decision?

7 A Yes.

8 Q Why is that?

9 A Because I think everyone basically needs some type of a  
10 track record just to base your decision on.

11 Q While you were considering an investment, did you receive  
12 documents about MSMB Healthcare?

13 A Yes.

14 Q What were they?

15 A They were the basic documents you get before an  
16 investment. There is a Private Placement Memorandum, there is  
17 a subscription agreement, and there is an investor  
18 questionnaire.

19 Q Did you review those documents?

20 A I went over them, I briefed them.

21 Q What do you mean by brief them?

22 A I looked them. I didn't sit and read every word for word  
23 for five hours. I did look them over. I'd seen documents  
24 like that before, a lot of it is just the same language.

25 Q When you do that, do you have a sense of what you're

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1 looking for in the document?

2 A There is a couple of key words, yes, absolutely.

3 Q Did you rely on the information contained in the  
4 documents we were just talking about?

5 A Yes.

6 Q I'm showing you what is marked for identification as  
7 Government's Exhibit 109-3.

8 Mr. Geller, you have a big binder and a little  
9 binder. In the big binder, it's tab three. On the front page  
10 what kind of document is this?

11 A Investment letter with all the attachments of the  
12 documents.

13 MR. SRINIVASAN: Your Honor, we move Government's  
14 Exhibit 109-3 into evidence.

15 MR. BRAFMAN: No objection.

16 THE COURT: We will receive 109-3.

17 (Government Exhibit 109-3, was received in  
18 evidence.)

19 Q Focusing on the top for a minute, who sent these  
20 documents to you?

21 A Kevin Mulleady.

22 Q Who is Kevin Mulleady?

23 A Kevin was the, he was the salesman of the hedge fund and  
24 he performed other tasks as well.

25 Q When you say the hedge fund, we're talking about MSMB

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1 Healthcare?

2 A MSMB Healthcare.

3 Q When did he send this e-mail to you?

4 A June 22, 2011.

5 Q You mentioned attachments a second ago, what are the  
6 attachments that are listed here?

7 A Private Placement Memorandum, a subscription agreement,  
8 and a individual questionnaire.

9 Q Let's go to the third page of this exhibit, which is  
10 Bates number R036371, what is this document?

11 A This is the cover letter to the Private Placement  
12 Memorandum.

13 Q For which fund?

14 A MSMB Healthcare.

15 Q Who is listed as the managing partner?

16 A Martin Shkreli.

17 Q What is the date on this document?

18 A January 1st, 2011.

19 Q Mr. Geller, I'm showing you what is marked for  
20 identification as Government's Exhibit 11A, if you keep a  
21 finger on the page that you have now, tab three, then go to  
22 tab 30.

23 A Okay.

24 Q What is the document that's behind tab 30?

25 A Private Placement Memorandum.

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1 Q For what fund?

2 A MSMB Healthcare.

3 Q What is the date on this document?

4 A January 1st, 2011.

5 Q Mr. Geller, is this the same document that we just saw as  
6 an attachment?

7 A Yes, it is.

8 MR. SRINIVASAN: We move to admit Government's  
9 Exhibit 11A.

10 MR. BRAFMAN: No objection.

11 THE COURT: We will receive 11A.

12 (Government Exhibit 11A, was received in evidence.)

13 Q Let's stick with this document on tab 30, 11A in  
14 evidence. Please turn to the page that has Bates number  
15 R036372, which is the second page of this document. If we  
16 could zoom in on the second full paragraph.

17 Do you see the language that says, "The  
18 partnership's investment objective will be to seek superior  
19 absolute returns, while attempting to minimize portfolio  
20 volatility, primarily through long and short equity  
21 investments in healthcare companies located in the United  
22 States and throughout the world."

23 A Yes.

24 Q What, if anything, did you understand that language to  
25 mean?

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1 A It meant that it was pretty much in line with what I was  
2 looking for to invest in. But it meant to me that superior  
3 absolute returns means, that if the general market has a big  
4 move on the upside or the down side, the investment will be  
5 shielded because it has long and shorts. It also meant that  
6 there will be low volatility, which means not wild swings.  
7 And long and short investment in health care companies will be  
8 long investment and short investments in health care companies  
9 in the U.S. and the world.

10 Q Mr. Geller, was this information important to your  
11 investing decision?

12 A Very important.

13 Q Why was that?

14 A Because it fit my objective. I was looking for only an  
15 investment that was liquid.

16 Q Let's go to Bates R036381, the 11th page of this exhibit,  
17 the paragraph capital withdrawals?

18 A Yes.

19 Q The first sentences say, "Limited partners may withdraw  
20 any or all of their capital accounts subject to certain  
21 reserves which may be established by the general partner to  
22 cover contingent liabilities of the partnership monthly at the  
23 last calendar day, of each month commencing one full month  
24 after the date of their initial investment in the partnership  
25 of upon not less than 30 days prior written notice to the



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1 general partner." Do you see that?

2 A Yes.

3 Q What did you understand this to mean?

4 A This means that an investor in the fund can cash out on a  
5 monthly basis, giving 30 days' written notice.

6 Q Was this information important to your investing  
7 decision?

8 A Yes.

9 Q Why is that?

10 A It was part of the whole liquidity. If you needed your  
11 money back you can get it without any road blocks or other  
12 obstacles.

13 Q Let's go to the next page, which is Bates R036382, do you  
14 see the paragraph that starts, "Partnership reports"?

15 A Yes.

16 Q The first sentence says, "Following the end of each  
17 fiscal year, the partnership's certified public accountants  
18 will audit for delivery by the general partner to each limited  
19 partner financial statements of the partnership for such year,  
20 as well as a statement of such limited partner's capital  
21 account and certain tax information for the preparation of  
22 such limited partner's income tax returns." Do you see that?

23 A Yes.

24 Q There is a reference there to certified public  
25 accountants will audit, what, if anything, did that mean to

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1 you?

2 A That's pretty much what, from what I understand, all  
3 hedge funds have. They have a certified public accountant who  
4 does the audits at the end of the year.

5 Q When you invested in hedge funds in the past, have those  
6 hedge funds had auditors?

7 A Yes.

8 Q And administrators?

9 A Yes.

10 Q Was the presence of an auditor important to your  
11 investing decision?

12 A Yes.

13 Q Why is that?

14 A Because this way everything was checks and balances,  
15 everything was done right.

16 Q When you say everything was done right, what do you mean?

17 A Well, the brokerage firm or hedge fund has certain  
18 responsibilities to the investors as a due diligence type of  
19 thing to make sure the booking of the positions are, the  
20 positions are looked at, positions are right, there will be  
21 monthly statements sent out, accurate monthly statements and  
22 so on.

23 Q Now how would having or not having an auditor affect your  
24 investing decision?

25 A I would not invest in any investment if there wasn't an

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1 auditor or a certified public accountant.

2 Q I'm showing you what is marked for identification as  
3 Government's Exhibit 109-4, which is tab four of your binder,  
4 do you recognize this document?

5 A Yes.

6 Q What kind of document is it?

7 A It's an investor letter.

8 Q Did you receive it?

9 A I did.

10 MR. SRINIVASAN: Your Honor we move to admit 109-4.

11 MR. BRAFMAN: No objection.

12 THE COURT: We receive 109-4.

13 (Government Exhibit 109-4, was received in  
14 evidence.)

15 Q Looking at the top, Mr. Geller, who sent this to you?

16 A Kevin Mulleady.

17 Q When did he send it to you?

18 A June 23, 2011.

19 Q Let's look at the first two paragraphs, if we could zoom  
20 in on those, please. The first paragraph says, "MSMB Capital  
21 management, a fund specializing in long-term strategic  
22 investments in healthcare and biotechnology businesses, today  
23 announced that it had made a proposal to the Board of  
24 Directors of SeraCare" --

25 MR. BRAFMAN: Objection, your Honor.

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1 THE COURT: What is the objection, sir?

2 MR. BRAFMAN: It's not relevant.

3 MR. SRINIVASAN: I can make a proffer, your Honor.

4 THE COURT: I'll hear from the parties.

5 (Continued on the next page.)

6 (Sidebar conference.)

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## SIDEBAR CONFERENCE

1 MR. SRINIVASAN: Your Honor, this is a notification  
2 that was sent out to investors of a press release. We've done  
3 this before with other investors and shown this document and  
4 talked to them about it, Dr. Rosenfeld for example.

5 Two, the relevance for this witness is that it  
6 impressed him about the financial wherewith all of MSMB  
7 entities. For example, you'll see \$82 million cash offer to  
8 SeraCare, that offer is not subject to any financing  
9 condition. This is just days before he invests, which is what  
10 we're going to get to in just a few minutes. So what it  
11 impresses him about is about the assets and the finances that  
12 the defendant has. It gives him confidence in the investment.  
13 If the concern is that we are somehow getting into details --

14 MR. BRAFMAN: Are you putting this into evidence?

15 THE COURT: You did. You didn't object.

16 MR. SRINIVASAN: We're not getting into the details  
17 of the deal, that there is false information, just the  
18 impression to the witness.

19 THE COURT: The effect on him.

20 MS. SMITH: We did the same document in for  
21 Rosenfeld, the same discussion.

22 THE COURT: Okay.

23 (End of sidebar conference.)

24 (Continued on the next page.)

25

D. GELLER - DIRECT - SRINIVASAN

1 (In open court.)

2 BY MR. SRINIVASAN:

3 Q Mr. Geller, why don't I start by starting the reading  
4 this paragraph again.

5 So the first paragraph there says, "MSMB Capital  
6 Management, a fund specializing in long-term strategic  
7 investments in healthcare and biotechnology businesses today  
8 announced that it has made a proposal to the Board of  
9 Directors of SeraCare Sciences Inc. to acquire all the  
10 outstanding common stock of SeraCare for \$4.25 per share or an  
11 aggregate of \$82 million. This proposal represents an  
12 approximate 22 percent premium of the closing price of  
13 SeraCare stock 3.49 on June 22, 2011. MSMB's offer is  
14 conditioned upon completion of cursory due diligence and other  
15 customary provisions. MSMB's offer is not subject to any  
16 financing condition."

17 In the second paragraph it says, "MSMB's offer is  
18 not subject to any financing conditions," do you see that?

19 A Yes.

20 Q What did that language mean to you?

21 A That they don't, they can do it themselves, they don't  
22 really, they don't need help with loans or bridge financing or  
23 any of those other financial things.

24 Q What, if any, impression did this e-mail make on you  
25 about MSMB Healthcare and the defendant?

D. GELLER - DIRECT - SRINIVASAN

1 A Actually it made a very good impression.

2 Q Why is that?

3 A Well, after reading it, it led me to believe that MSMB  
4 Healthcare was very-well capitalized, if they were going to  
5 purchase a public company for this amount of money.

6 Q Did you in fact invest in MSMB Healthcare?

7 A I did.

8 Q How much did you invest?

9 A 200,000.

10 Q I'm showing you what is marked for identification as  
11 Government's Exhibit 28, tab 32 in your binder. What is this  
12 document?

13 A It's a subscription agreement.

14 Q Is this a document that you signed?

15 A It is.

16 Q For what fund?

17 A MSMB Healthcare.

18 MR. SRINIVASAN: Your Honor we move to admit  
19 Government's Exhibit 28.

20 MR. BRAFMAN: No objection.

21 THE COURT: We will receive Government's Exhibit 28.

22 (Government Exhibit 28, was received in evidence.)

23 Q Mr. Geller, let's go to the 12th page, Bates R011939.  
24 Did you sign this document?

25 A I did.

D. GELLER - DIRECT - SRINIVASAN

1 Q When did you sign it?

2 A June 29, 2011.

3 Q At the time you invested, did the defendant ever mention  
4 a company called Orexigen or Orex?

5 MR. BRAFMAN: Objection, no testimony that he spoke  
6 to Mr. Shkreli before he invested.

7 MR. SRINIVASAN: He had a phone call, your Honor.

8 THE COURT: Let's not argue in front of the jury.  
9 Lay a foundation about conversations.

10 BY MR. SRINIVASAN:

11 Q Mr. Geller --

12 THE COURT: Before the investment.

13 Q Mr. Geller, before you invested in MSMB Healthcare, did  
14 you ever speak to the defendant?

15 A I did.

16 Q And in that conversation and before the time you  
17 invested, did the defendant ever mention a company called  
18 Orexigen sometimes abbreviated as Orex?

19 A He did not.

20 Q Over the course of your investment, did you receive  
21 information about the performance of your investment?

22 A Yes.

23 Q How did you receive that information?

24 A I got investor statements.

25 Q You have a binder that's labeled 91 series, it has ten



D. GELLER - DIRECT - SRINIVASAN

1 tabs in it. These exhibits are marked for identification as  
2 Government's Exhibits 91-1 through 91-10, do you recognize  
3 these documents?

4 A Yes.

5 Q What are they?

6 A These are the investor statements.

7 MR. SRINIVASAN: Your Honor we move to admit  
8 Government's Exhibit 91-1 through 9-10.

9 MR. BRAFMAN: No objection.

10 THE COURT: We will receive 91-1 through 91-10.

11 (Government Exhibit 91-1 through 91-10, was received  
12 in evidence.)

13 Q Tab one, 91-1, if you look at the middle e-mail, it  
14 should be on your screen, who sent the e-mail to you?

15 A NAVConsulting.net.

16 Q What, if anything, did you understand NAV Consulting to  
17 be?

18 A I believed it was their consulting and administrative  
19 type firm.

20 Q What is the date on the e-mail?

21 A August 9, 2011.

22 Q For what month is this statement?

23 A July 2011.

24 Q Let's go to page two of this exhibit, Bates R013294, what  
25 was your ending balance according to this statement?

D. GELLER - DIRECT - SRINIVASAN

1 A 205,000.

2 Q Did you believe that these investor statements were  
3 accurate?

4 A I did.

5 Q Did you rely on these statements to keep track of your  
6 investment.

7 A Yes.

8 Q Did these statements have any influence in terms of  
9 keeping your money in MSMB Healthcare?

10 A They had some.

11 (Continued on following page.)  
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GELLER - DIRECT - SRINIVASAN

1 A They had some. Just pretty much, you know, you see to  
2 how the game is going, to see what the score is.

3 DIRECT EXAMINATION (CONTINUED)

4 BY MR. SRINIVASAN:

5 Q Okay. Let's go to the next tab, which is Government  
6 Exhibit 91-2.

7 And focusing on the middle email, Mr. Geller, what's  
8 the date on this email?

9 A October 27th, 2017.

10 Q For what month is this statement?

11 A September 2011.

12 Q Let's go to page 2. What was your ending balance for  
13 this month?

14 A \$210,354.

15 Q Mr. Geller, do you see some fine print at the bottom of  
16 that page?

17 A Yes.

18 Q And is there a reference to Retrophin in this fine print?

19 A Yes.

20 Q Did this fine print make any impression on you at this  
21 time?

22 A To tell you truth, I didn't -- I didn't notice -- I mean,  
23 there was something there but I never -- I never -- I never  
24 bothered to really read it.

25 Q Let's go to Government Exhibit 91-3, which is the next

GELLER - DIRECT - SRINIVASAN

1 tab in your binder.

2 Mr. Geller, what's the date on the email?

3 A November 30th, 2011.

4 Q And for what month is the statement?

5 A October 2011.

6 Q Let's go to the second page. What was your ending  
7 balance for this month?

8 A \$199,938.

9 Q And if we could zoom in on that paragraph at the bottom.

10 Mr. Geller, do you see a reference to Retrophin in  
11 this time frame?

12 A Yes.

13 Q Did this fine print make any impression on you at this  
14 time?

15 A Yes, it did. It absolutely did. I mean, I did notice  
16 the footnote at this time.

17 Q At this point what, if anything, was your understanding  
18 of Retrophin?

19 A I really had no idea what it was.

20 Q And in the first sentence of the fine print, it says:

21 MSMB Healthcare, LP has accepted the transfer of 30,000

22 investment units consisting of Class A common units of

23 Retrophin, LLC, a Delaware limited liability company focused

24 on developing biopharmaceutical products for Martin Shkreli at

25 no consideration as a gift.

GELLER - DIRECT - SRINIVASAN

1           What, if anything, was your understanding of the  
2   language "at no consideration as a gift"?

3   A     My understanding was that it was -- it was a gift that  
4   was gifted to all -- whoever he gifted it to.

5   Q     To MSMB Healthcare?

6   A     Well, in looking at this footnote, yes, MSMB Healthcare.

7   Q     At this point, did you believe that MSMB Healthcare had  
8   paid money to invest in Retrophin?

9   A     I'm sorry, say it again?

10   Q     Of course. At this point, did you believe that MSMB  
11   Healthcare had paid money to invest in Retrophin?

12   A     No.

13   Q     Did you have any understanding of the size of MSMB  
14   Healthcare's position in Retrophin?

15   A     I did not.

16   Q     So let's go back to the big binder. And I'm showing you  
17   what's been marked for identification as Government  
18   Exhibit 109-6. It's Tab 6 in your -- in the big binder.

19   A     Okay.

20   Q     Now, what kind of document is this?

21   A     An investor letter.

22   Q     Did you receive it?

23   A     I did.

24           MR. SRINIVASAN: Your Honor, we move to admit  
25   Government's Exhibit 109-6.

GELLER - DIRECT - SRINIVASAN

1 MR. AGNIFILIO: No objection.

2 THE COURT: We will receive 109-6.

3 (Government Exhibit 109-6, was received in  
4 evidence.)

5 Q And, Mr. Geller, who sent this email to you?

6 A NAV Consulting.

7 Q And the email says: Dear investor, please find attached  
8 an important notice from the fund, along with a materially  
9 revised PPM dated October 28th, 2011. These are critical  
10 notices for your information and may require a response action  
11 on your part, if you have any objection to the changes to the  
12 PPM. For this reason we urge you to carefully review both  
13 documents and exercise due care in your investment decision.

14 Do you see that?

15 A Yes.

16 Q And I'm looking at the attachment line. Are there  
17 attachments? On the email, sir.

18 A Okay.

19 Q On that first page, are there attachments to this  
20 document?

21 A Private placement memorandum.

22 Q And letter to investors?

23 A And letter to investors, yes.

24 Q You know, I'm not sure if I asked you before.

25 Traderexp@aol.com, who is that?

GELLER - DIRECT - SRINIVASAN

1 A That's my email.

2 Q Okay. So let's go to the fourth page of this exhibit,  
3 which is Bates number DG00010.

4 What is this document?

5 A A private placement memorandum.

6 Q For what month?

7 A MSMB Healthcare.

8 Q What's the date of this document?

9 A October 28th, 2011.

10 Q Now, if you could just keep this page open for a second.  
11 I'm showing you what's been marked for identification as  
12 Government Exhibit 11B, which is Tab 31 in your binder.

13 What is this document?

14 A Private placement memorandum.

15 Q What's the date on this document?

16 A October 28th, 2011.

17 Q Mr. Geller, is this the same document that we saw just a  
18 minute ago?

19 A Yes.

20 MR. SRINIVASAN: Your Honor, we move Government's  
21 Exhibit 11B into evidence.

22 MR. AGNIFILIO: No objection.

23 THE COURT: We received Government's Exhibit 11B.

24 (Government Exhibit 11B, was received in evidence.)

25 Q Mr. Geller, let's go back to the Tab 6 in the binder and

GELLER - DIRECT - SRINIVASAN

1 stick to the documents there. And that's Government  
2 Exhibit 109-6 in evidence.

3 If you can go back two pages from where you were,  
4 it's Bates-numbered DG0008.

5 So this is a letter to investors from the defendant.  
6 And if we can zoom in on the first three paragraphs of this  
7 letter?

8 MR. BRAFMAN: Is that a separate exhibit number?

9 MR. SRINIVASAN: No, this is all part of 109-6, the  
10 attachments to the email.

11 Q Mr. Geller, this part of the letter reads: MSMB  
12 Healthcare, LP has updated it's private placement memorandum  
13 to reflect new disclosures regarding the fund. Specifically,  
14 MSMB Healthcare, LP has expanded its disclosure regarding its  
15 ability and intent to invest in illiquid securities including  
16 venture capital, private equity limited partnerships and other  
17 hedge funds. If you disagree with these changes, we will  
18 facilitate your redemption within our standard parameters.  
19 MSMB Healthcare, LP has and will continue to invest in  
20 MSMB-affiliated entities, which are controlled by the  
21 MSMB Capital umbrella. These entities may or may not be  
22 administered and audited, and the fund will rely heavily on  
23 our impressions of value of these assets. These investments  
24 are expected to be a material portion of the funding assets.  
25 MSMB Healthcare, LP may invest in private equity, directly or



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1 indirectly. MSMB-affiliated partnerships are most likely to  
2 carry out these private equity investments. There's no  
3 assurance that these investments will be profitable, and any  
4 equity invested may not be able to be returned for a  
5 redemption.

6 What, if anything, was your reaction to receiving  
7 this information?

8 A Very negative reaction.

9 Q Why is that?

10 A Because they were changing the objective of the fund,  
11 which is not what I originally planned for. Originally  
12 wanted.

13 Q Was it consistent or inconsistent with your objectives?

14 A Inconsistent.

15 Q In what way?

16 A It looked like they were trying to turn the fund into an  
17 illiquid fund that invested in -- in private type -- private  
18 type of investments, as it says, in the first paragraph.

19 Q At some point after you received this information, did  
20 you try to redeem your investment?

21 A Yes.

22 Q I'm showing you what's marked for identification as  
23 Government's Exhibit 109-7, which is Tab 7 in your binder.

24 Now, what kind of document is this?

25 A It's a email.

GELLER - DIRECT - SRINIVASAN

1 Q Are you on the email?

2 A Yes.

3 Q And who else is on the email?

4 A Kevin Mulleady and Martin Shkreli.

5 MR. SRINIVASAN: Your Honor, we move to admit  
6 Government Exhibit 107-9?

7 MR. BRAFMAN: No objection.

8 THE COURT: We will receive 109-7.

9 (Government Exhibit 109-7, was received in  
10 evidence.)

11 Q Mr. Geller, when did you write this email?

12 A January 24th, 2012.

13 Q What did you write?

14 A I wrote: Kevin and Martin, after careful thought, I have  
15 decided to put in for redemption. This is my own personal  
16 decision as the investment objective of the fund no longer  
17 matches my personal objective. I believe we have talked about  
18 this in the past. Basically, my portfolio already has too  
19 much private equity and illiquid components in it. Let's try  
20 and chat later. David Geller.

21 Q What did you mean when you wrote that the investment  
22 objective of the fund no longer matches my personal objective?

23 A I meant that it -- I wanted -- I my original goal was  
24 to -- I was only really going to invest in this fund if it  
25 was -- sorry, a liquid balanced fund. And now it looks like,

GELLER - DIRECT - SRINIVASAN

1 you know, after they sent this letter, they wanted to change  
2 the make up of the fund.

3 Q What happened after you sent this email? Did you redeem?

4 A I never fully, no, I never redeemed.

5 Q Why not?

6 A Because I had some conversations with Kevin and Martin  
7 and they convinced me to stay in the fund.

8 Q And what did Kevin Mulleady and the defendant say?

9 A I think the main thing they said was this private  
10 investment letter that they sent to me, they -- it was just  
11 going to be -- when they did invest in the liquid private --  
12 private other hedge fund things, that it was going to be a  
13 very small portion of the fund.

14 Q And was this a conversation by phone or in person?

15 A Conversation by phone.

16 Q And did it take place after you sent the email or before?

17 A It took place after I sent the email.

18 Q And at this point, was your understanding of the size of  
19 the MSMB Healthcare's investment in illiquid securities  
20 important for your investing decision?

21 A Yes.

22 Q Let's go back to the binder that's labeled 91 series.  
23 The smaller binder that you have. And if you can go to  
24 Government's Exhibit 91-8, which is Tab 8 in that binder.

25 What is the date on this email?

GELLER - DIRECT - SRINIVASAN

1 A September 9th, 2012.

2 Q What month does this statement cover?

3 A May of 2012.

4 Q Going to the second page. What was your ending balance  
5 here?

6 A \$251,228.

7 THE COURT: I'm sorry, did you say it was in  
8 evidence.

9 MR. SRINIVASAN: It is part of Government's  
10 Exhibit 91-1 through 10. They're admitted.

11 THE COURT: Right.

12 Q Mr. Geller, some of the statements we saw earlier were  
13 sent to you by NAV Consulting.

14 Do you recall that?

15 A Yes.

16 Q And if we go back to the first page of this exhibit, who  
17 sent this one to you?

18 A Martin Shkreli.

19 Q Did there come a point when your statements no longer  
20 came from NAV Consulting?

21 A This statement did not -- did not come from NAV  
22 Consulting.

23 Q And did you have any understanding of how that change  
24 came about or why?

25 A No.

GELLER - DIRECT - SRINIVASAN

1 Q At this point, in September 2012, did you believe that  
2 MSMB Healthcare had an administrator?

3 A Yes.

4 Q And at this point, was having or not having an  
5 administrator important to your decision to keep investing in  
6 MSMB Healthcare?

7 A Yes.

8 Q Why is that?

9 A Because if they didn't have an administrator, then  
10 something would be wrong.

11 Q What do you mean by "wrong"?

12 A Well, what we talked about before, like the administrator  
13 has -- I mean, the fund has to run with an administrator.

14 Q Go to the next tab, Government's Exhibit 91-9.

15 What's the date of this email?

16 A June 2012.

17 Q If you look closer to the top, what's the date on the  
18 email?

19 A Oh, I'm sorry. September 9th, 2012.

20 Q And for what month is it, the statement?

21 A June 2012.

22 Q And if we go to page 2 of the document. What's your  
23 ending balance here?

24 A \$272,760.

25 Q And let's go to the next tab, which is Government's

GELLER - DIRECT - SRINIVASAN

1 Exhibit 91-10 in evidence.

2 What's the date on this email?

3 A September 10, 2012.

4 Q For what month is this statement?

5 A July 2012.

6 Q And going to the second page, what was the value of your  
7 investment here?

8 A \$299,343.

9 MR. SRINIVASAN: Ms. Zellan, if we can put the first  
10 pages of 91-9 and 91-10 side by side. And if we can zoom in,  
11 please, on the email at the top of this page.

12 Q Mr. Geller, it's on your screen.

13 Taking these exhibits together, in your experience,  
14 was there anything unusual about the timing of these investor  
15 statements?

16 A Yes.

17 Q What was that?

18 A There was a four- or five-month lag from when the  
19 statements were sent out from the actual -- from the actual  
20 date.

21 Q Did you have any reaction to the timing of the  
22 statements?

23 A It wasn't -- it wasn't kosher with me because I mean a  
24 five-month lag, I didn't understand why there was a five-month  
25 lag.

GELLER - DIRECT - SRINIVASAN

1 I was -- I was a little bit worried.

2 Q Mr. Geller, now taking all of these performance  
3 statements together, did you rely on them?

4 A Yes.

5 Q Do you believe them to be accurate?

6 A I did.

7 Q To what extent were inaccurate or accurate performance  
8 statements important to your investment decision?

9 A Repeat that again, I'm sorry.

10 Q I'm sorry, I said that quickly.

11 To what extent were accurate or inaccurate  
12 performance statements important to your continued investment  
13 decisions?

14 A It's -- I think I said it before, it's just like a -- an  
15 ongoing line score just to see how the fund is doing, how --  
16 how the month -- how the performance changes month to month.

17 Q Now, during the course of your MSMB Healthcare  
18 investment, did you approve any personal loans by MSMB  
19 Healthcare to the defendant?

20 A No.

21 MR. BRAFMAN: Objection, Your Honor, it assumes a  
22 requirement.

23 THE COURT: I think this was the subject of a prior  
24 discussion.

25 A sidebar, I'm going to sustain the objection.

GELLER - DIRECT - SRINIVASAN

1 MR. SRINIVASAN: Your Honor, could we just explain  
2 very briefly on this one question.

3 THE COURT: All right.

4 (Continued on the next page.)

5 (Sidebar conference.)  
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## SIDEBAR CONFERENCE

1 MR. SRINIVASAN: This exact question I think Your  
2 Honor overruled the objection to. There was a follow-on  
3 question that related to the notification of personal loans  
4 and so on. This is in connection when you checked the  
5 statements.

6 THE COURT: Oh, okay. Okay.

7 MR. SRINIVASAN: This factual question was okay, but  
8 I'm not going to follow-up questions.

9 MR. BRAFMAN: Objection, Judge. It's hard for me to  
10 remember, you know, everything. But this presumes a duty by  
11 the general partner to disclose this to a limited partner,  
12 because otherwise why ask the question. And there is no such  
13 duty anywhere in the private placement memorandum. And just  
14 asking him, would you have liked to know, or did you know is  
15 just not fair. It suggests to the jury that there's an  
16 obligation by the general partner to inform every limited  
17 partner every time they do something. And the private  
18 placement memorandum gives the general partner substantial  
19 discretion in what to do and how to do it. There's no  
20 obligation for them to notify him that they're going to borrow  
21 money or loan money. None.

22 THE COURT: Well, I think there's a distinction  
23 between borrowing and lending money for fund purposes versus  
24 borrowing money for personal general partner purposes.

25 Are you saying that he has the authority under the

## SIDEBAR CONFERENCE

1 private placement memo or any other arrangement to take  
2 personal loans from the fund?

3 MR. BRAFMAN: It's not addressed anywhere, which  
4 means there's no legal obligation.

5 THE COURT: All right.

6 MR. SRINIVASAN: We're almost done.

7 THE COURT: Ladies and gentlemen of the jury, I  
8 think rather than give you a break, I will dismiss you for the  
9 day and ask you to come back at 9:00 in the morning.

10 Please don't talk about the case. Please leave your  
11 notebooks on the chair and, you know, conscientiously avoid  
12 any media, please.

13 (Jury exits the courtroom.)

14 MR. BRAFMAN: Your Honor, I can conceive a hundred  
15 different things that a limited partner would like to know,  
16 which might peak their interest every time the general partner  
17 makes a decision. But the fact remains that there is nothing  
18 in the partnership agreement, or in the private placement  
19 memorandum that addresses these matters.

20 THE COURT: One moment, I just want to excuse the  
21 witness, too. Sorry. Bear with me.

22 Sir, Mr. Geller, you're excused for the remainder of  
23 the day.

24 (Whereupon, the witness was excused.)

25 THE COURT: All right, so let's hear from the

## SIDEBAR CONFERENCE

1 government on this issue, please.

2 MR. SRINIVASAN: Your Honor, there's nothing in the  
3 PPM that authorizes the defendant to take personal loans from  
4 the partnership. And these are the partners' assets, that  
5 he's managing.

6 There are provisions, for example, for a 1 percent  
7 management fee for operating expenses; there's a 20 percent  
8 performance fee that he gets. Those are the kinds of things  
9 that he's allowed to take from the fund.

10 One of the reasons this issue comes up is, I think  
11 as we addressed this last time, the 775,000-dollar payment  
12 comes back to MSMB Healthcare, the defendant has claimed that  
13 this was a payment that will be distributed back to the  
14 limited partners. It was money that belongs to the limited  
15 partners, it never happened.

16 THE COURT: This is a loan?

17 MR. SRINIVASAN: He classifies it as loan, but this  
18 is part of, I think, the process of moving money between  
19 entities to pay off Merrill Lynch and various other  
20 obligations.

21 So I think it's part of our proof and part of the  
22 misappropriation scheme. This is relevant. This is money  
23 that he's using and he's described it in a certain way and  
24 nobody knew about it.

25 MR. BRAFMAN: I'm not quarreling with you that it's

## SIDEBAR CONFERENCE

1 relevant for you to be able to show it through your  
2 accountants, which you've already to show the movement of  
3 money. It's not relevant to confront the witness because he  
4 has no opinion to offer. We have a lot of discretion under  
5 the terms of the agreement.

6 MR. SRINIVASAN: We also have to establish that the  
7 witness does not know and then argue the other elements, that  
8 that's irrelevant for the jury's consideration. I think we  
9 have a duty to find out what the witness knows and or does not  
10 know, which is something that Mr. Brafman and his colleagues  
11 have been doing repeatedly in his cross-examination of  
12 witnesses.

13 MR. BRAFMAN: Would it be relevant if you knew that  
14 the general partner was sleeping on the floor of his office  
15 like a vagrant? Would that be relevant? It would affect your  
16 ability -- your willingness to participate if you knew that  
17 the person in charge had these issues? Why is that different?

18 MR. SRINIVASAN: That's what the witness knows. He  
19 think that's relevant.

20 MR. BRAFMAN: That's relevant to who Martin Shkreli  
21 is, not what he knows. You want to put in the loan, you have  
22 it in your records.

23 MR. SRINIVASAN: I'm establishing he doesn't know.

24 MR. BRAFMAN: But why does he have to know?

25 MS. SMITH: There's an argument in the testimony,

## SIDEBAR CONFERENCE

1 and we're not putting it into evidence, but Mr. Shkreli's  
2 claim has been that he got permission from the limited  
3 partners to take out this personal loan.

4 MR. BRAFMAN: From the limited partners?

5 MS. SMITH: At least some of the limited partners.

6 MR. BRAFMAN: I don't think there's any discussion  
7 with him about this.

8 MS. SMITH: There may be with other witnesses, and  
9 we would like to establish that this is not, in fact, certain  
10 of the investors whether he took it as a personal loan.

11 THE COURT: Is there going to be evidence about the  
12 SEC testimony regarding whether or not certain of the limited  
13 partners were aware of the loan?

14 MS. SMITH: Not from the SEC testimony. But I think  
15 we will establish through our witnesses that they did not  
16 know, and then the SEC testimony from the defendant will  
17 establish that he classified it as a personal loan and that he  
18 did not make a written disclosure.

19 MR. BRAFMAN: I'm not arguing that there is going to  
20 be evidence that Mr. Shkreli took it as a loan. What I'm  
21 suggesting, obviously not compellingly enough, is that just  
22 because he does something, doesn't impose an obligation to  
23 notify a limited partner who is bound by the partnership  
24 agreement.

25 If you and I run a store together, we have a

## SIDEBAR CONFERENCE

1 partnership agreement. It doesn't mean I have to tell you if  
2 I borrow money from somebody to put my money into your  
3 business. It doesn't say that. That's the legal operative  
4 document.

5 MS. SMITH: It's a misuse of corporation funds.  
6 You're allowed to take out 1 percent of the management fees.  
7 The operating fees are very clear. There's nothing else in  
8 there that let's him take it out.

9 We can argue it, but we have a right to establish  
10 that there was no extra agreement outside of that PPM between  
11 the partner and Mr. Shkreli that would have permitted him to  
12 do that.

13 MR. BRAFMAN: Your Honor, I made the record. I  
14 don't want to delay. Everyone's going home.

15 I've questioned this argument. I've objected. You  
16 have a ruling, and I stand by my objection.

17 THE COURT: All right. So just to be clear, I was  
18 confused about the prior sidebar where Ms. Smith was going to  
19 go back for emails about the personal loan. And I thought it  
20 was going to be put to rest.

21 But to the extent it is directly relevant to the  
22 charge that's misappropriated the funds, I think that this  
23 should be permitted, and I understand and I overrule your  
24 objection.

25 MR. BRAFMAN: Thank you.

SIDEBAR CONFERENCE

1 MS. SMITH: And just to make the record clear, we  
2 did circle back on the hypothetical that originally followed  
3 and agreed that the hypothetical was not appropriate, but that  
4 the underlying question was.

5 THE COURT: All right. Okay.

6 MR. BRAFMAN: Good night, Judge.

7 MR. SRINIVASAN: Thank you, Judge.

8  
9 (Proceedings adjourned at 4:50 p.m. to resume on  
10 July 13, 2017 at 9:00 a.m.)  
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